

REGULATORY REFORM SERIES, PART 8: PRIVATE-
SECTOR VIEWS OF THE REGULATORY CLIMATE
ONE YEAR AFTER EXECUTIVE ORDER 13563

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON ENERGY AND
COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION

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THURSDAY, FEBRUARY 16, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:06 a.m., in room 2322 of the Rayburn House Office Building, Hon. Cliff Stearns (chairman of the subcommittee) presiding.

Members present: Representatives Stearns, Terry, Sullivan, Burgess, Blackburn, Bilbray, Gingrey, Scalise, Gardner, Griffith, DeGette, Green, and Waxman (ex officio).

Staff present: Allison Busbee, Legislative Clerk; Mary Neumayr, Senior Energy Counsel; Alan Slobodin, Deputy Chief Counsel, Oversight; Sam Spector, Counsel, Oversight; Peter Spencer, Professional Staff Member, Oversight; Alvin Banks, Democratic Investigator; Tiffany Benjamin, Democratic Investigative Counsel; and Brian Cohen, Democratic Investigations Staff Director and Senior Policy Advisor.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning, everybody. The Subcommittee on Oversight and Investigations is in session.

My colleagues, we convene the eighth in a series of subcommittee hearings since last January to address the administration's approach to regulatory reform. Today, we will receive testimony from several private sector witnesses. No one understands better than they do how the regulatory climate at present impacts their day-to-day operations and future business planning, including opportunities for economic growth and job creation. In fact, according to a Gallup Poll released yesterday, nearly half of the United States' small business owners who aren't hiring point to potential healthcare costs and government regulations as the reason why.

FactCheck.org, a project of the Annenberg Public Policy Center of the University of Pennsylvania, citing numbers provided to Congress in 2011 by the Office of Information and Regulatory Affairs, reports that the estimated cost of Federal regulations under President Obama from the time he took office to the end of the 2010 fiscal year, not including regulations issued by the independent regu-

latory agencies, was somewhere between \$8 billion and \$16.5 billion. During the same initial stretch under President Bush, the estimated cost of new regulations was between \$1.3 billion and \$3.4 billion. All figures have been adjusted for inflation.

President Obama's Executive Order 13563, issued just over 1 year ago, affirmed among other things that agencies must adopt only those regulatory actions whose benefits justify their costs and are tailored to impose the least burden on society. It also called on agencies to review significant regulations already in place. As the President observed in a January 18, 2011, op-ed in the Wall Street Journal, "sometimes, those rules have gotten out of balance, placing unreasonable burdens on business—burdens that have stifled innovation and have had a chilling effect on growth and on jobs."

Yet, while some very outdated rules might be eventually cut back or simply eliminated, the Obama administration is doing very little to counter the ongoing regulatory juggernaut of the Environmental Protection Agency or address the thousands of pages of bureaucratic burdens released so far to implement a massive takeover of healthcare and the controversial financial reform bill.

From industrial giants to small business start-ups, our Nation's job creators are still sitting on trillions of dollars in capital, in part because they are concerned with the number and burden of regulations that are being issued or proposed by the Obama administration, all of which are adding uncertainty to the oppressive regulatory environment.

For example, the Federal Deposit Insurance Corporation, in its annual summary of deposits as of June 30, 2011, confirmed that across the country, deposits shot up 7 percent, or \$8.25 trillion, from 2010 to 2011, outpacing the 2 percent growth that occurred between 2009 and 2010. However, my colleagues, it is more than excessive and unclear regulation that the private sector must cope with; it is also the perception that Federal regulators have an unhealthy suspicion towards the business community and/or are clueless as to the real-world impact of their rules.

We have before us today several representatives of American businesses from across the country and they reflect a wide range of industries. They will confirm that, 1 year later, we still have a long way to go. They will comment on how the current regulatory climate is affecting their day-to-day operations, including plans for expansion, investment, and hiring.

These witnesses include Andrew Puzder, CEO of CKE Restaurants, Incorporated, which through its subsidiaries, franchisees, and licensees operates several popular fast-food chains, including Carl's Jr. and Hardees. With more than 3,200 restaurant locations, CKE has created 70,000 jobs, 21,000 directly and 49,000 with franchisees. CKE, like many others today, faces the costly burden imposed by compliance with a litany of Obamacare-related rules, as well as other regulations which simply threaten to disrupt its role as an engine of economic growth.

We will also hear from Kimber Shoop, a senior environmental attorney with the Oklahoma Gas and Electric Company; Bob Luoto, President of Cross and Crown, Incorporated, a logging business he founded, working primarily in northwestern Oregon; Barbara Walz, Senior Vice President for Policy and Environmental with Tri-State

Generation and Transmission Association, a wholesale electric power supplier to Colorado, Nebraska, New Mexico, and Wyoming.

These witnesses will convey the message that even now, over 1 year after the President launched his regulatory reform initiative with great fanfare, their experience with the Federal regulatory state has continued largely unchanged, with little if any sign of relief. I hope that today's hearing and our hearing series cumulatively will move us one step closer to producing that much-needed relief for American job creators.

[The prepared statement of Mr. Stearns follows:]

**Opening Statement of the Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
“Regulatory Reform Series #8 – Private Sector Views of the Regulatory
Climate One Year After Executive Order 13563”
February 16, 2012**

(As Prepared for Delivery)

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thousands of pages of bureaucratic burdens released so far to implement a massive takeover of health care and the controversial financial reform bill.

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Mr. STEARNS. And with that, I yield to the ranking member.

OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Ms. DEGETTE. Thank you very much, Mr. Chairman. You forgot to mention the other two witnesses. I am sure that was just an oversight on your part. Dr. Mitchell and Mr. Williams, we are happy to have you also, as well as the rest of the witnesses.

Mr. Chairman, this is now the eighth hearing that we have had in this Congress on the issue of regulatory reform. I have got the message. The Republican majority supports regulatory reform and we have had hours and hours of hearings on this subject, but yet I haven't really seen anything clear come out of it except for we all support regulatory reform where appropriate. Everybody in this room and the administration believes we should ensure that regulations are simple, clear, reasonable, and not overly burdensome on the industries that they oversee. I am sure every single person on this panel today agrees with us on that.

If the goal of the ongoing series of hearings on President Obama's regulatory reform to ensure that that was the case, that regulations be simple, clear, and reasonable, I would be in complete support of these continued hearings. However, having now sat through seven of these hearings, it is clear to me we are not really making any progress; we are just spinning our wheels. And what we are doing is bringing in panel after panel of witnesses to lodge a litany of different personal complaints about regulations that might affect them.

Now, this subcommittee, which is one of the great subcommittees in the U.S. House of Representatives in my opinion—I have been on it for 15 years—we yield a lot of authority and responsibility. We have the ability to examine any issue within the purview of the mighty Energy and Commerce Committee. In the last Congress, we looked at crib safety, sought to understand the Deep Water Horizon oil spill, we tried to determine what led to the unintended acceleration in Toyotas. We did this in a bipartisan way, thoughtfully, by identifying real issues, by conducting research, even having field hearings where appropriate, talking to relevant parties, and looking at all sides of the issue.

In this Congress, Mr. Chairman, as you will attest, I have many ideas about ongoing investigations in addition to regulatory reform that we could undertake. Avian flu, what is going on with the research? What are we doing as a Nation to protect and to defend against some kind of a pandemic flu or other infection? What is the fallout from the Fukushima Daiichi disaster in Japan and how does that impact the U.S. nuclear industry? A follow-up on the Deep Water Horizon, what is going on now with drilling in the Gulf and is there more of it going on and in an environmentally sound way? How is implementation of the Affordable Care Act coming and what can we do statutorily to make sure that it is a success for Americans? And I could go on and on and on.

There are many things this subcommittee could be doing. Eight hearings to talk about the same thing without any progress seems

to me to be kind of a waste of time. And I say that with all due respect because I also believe that regulations should be tailored.

Now, I would say if we really were going to do oversight on regulatory reform and the impact of regulations on businesses, we could have invited a member of the Coalition of Small Business Organizations that just released a study on how small businesses feel about regulations. This month, the American Sustainable Business Council, the Main Street Alliance, and the Small Business Majority released the results of a survey of 500 small business owners. Their survey showed that the issues small business owners care most about is weak customer demand, not overregulation. They also found that 86 percent of small business owners believed that some regulation is necessary in the modern economy. Seventy-eight percent supported holding health insurance companies accountable so they can't raise rates unfairly. This is a huge issue for small business and big business alike.

Seventy-nine percent of the small businesses thought it was important to have clean air and water. Sixty-one percent supported establishing standards to move the country towards energy efficiency and clean energy. This survey shows what matters to American businesses and it isn't repealing the Clean Air Act or denying healthcare to workers. Business owners care more about getting people into their shops and buying their products, not doing away with regulations that ensure the safety and security of their families and their employees.

Regulations, when promulgated in the right way, have real benefits. They can save lives and keep communities safe. They can ensure that small businesses aren't unfairly pushed out of markets. Regulations should be narrowly tailored and reasonable, but we can't pretend that they don't provide real and important benefits to the American people.

I think we can and should do better. I hope we will have fact-finding hearings on important topics. And I will yield back before I start coughing more.

Mr. STEARNS. I thank the gentlelady.

I recognize Mr. Sullivan for 2 minutes.

OPENING STATEMENT OF HON. JOHN SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. SULLIVAN. Thank you, Chairman Stearns. Thank you for holding this important hearing to discuss private sector views of President Obama's Regulatory Initiative issued last year through Executive Order 13563. It is important that we hear from the private sector to assess whether President Obama's executive order is working to ease the day-to-day regulatory burdens on American companies and to evaluate if his Regulatory Initiative is creating jobs. Given the fact that his administration has taken no action to repeal any expensive regulations this year, I don't think they are off to a good start.

I would like to take a moment to welcome our witnesses today and make special mention of Mr. Kimber Shoop, the senior environmental attorney who is with us on behalf of Oklahoma Gas and Electric Company, a medium- to small-sized award-winning utility

in my State. I am pleased Mr. Shoop will speak of the challenges faced by OG&E as they try to navigate the regulatory train wreck of regulations coming from the Environmental Protection Agency these days. OG&E is in the regulatory crosshairs of several multi-billion-dollar EPA regulations, including Utility MACT, which happens to be the most expensive rule ever imposed on the utilities sector, the Cross-State Air Pollution rule, and compliance with the Regional Haze Rule.

The Regional Haze Rule is of particular note as Oklahoma officials presented a plan to EPA for regional haze they believe is right for our State, and now the EPA is bringing the heavy hand of the Federal Government to the Oklahoma ratepayers anyway by largely rejecting our State's implementation plan in favor of imposing its own Federal implementation plan. This is yet another example of EPA's overreaching on the States with burdensome regulations without analyzing its impact on electric reliability or cost. It is important to note that these regulatory actions by EPA do not happen in a vacuum; they impact everything from a company's ability to invest and make capital improvements to the rates, families, and small businesses paid for electricity services.

As we continue to press for real regulatory reforms, I am confident that this hearing will help us continue making the case that the Obama administration needs to move faster to reduce the regulatory burdens of American companies.

And I yield back.

Mr. STEARNS. The gentleman yields back.

The gentleman from Texas, Dr. Burgess, is recognized for 1 minute.

**OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BURGESS. Thank you, Mr. Chairman. And I, too, appreciate the hearing today. I will just state in comment to the opening statement by the ranking member, I, too, wish we had had a follow-up hearing on the unintended acceleration of Toyota vehicles because I think as we found out during that hearing and that process and getting documents from the National Highway Traffic Safety Administration that the problem was not electronic unintended acceleration, and that actually could have been put to rest by this committee. So it is a shame that was never undertaken.

But I do appreciate the witnesses being here with us today. The chairman referenced the Gallup Poll and I think it is significant that over half of the hiring that is not happening is occurring because of the Patient Protection Affordable Care Act. I know that is something we will continue to explore in this committee and I look forward to that.

So thank you, Mr. Chairman, and I will yield back to you.

[The prepared statement of Mr. Burgess follows:]

Mr. Chairman, thank you for this hearing on regulatory reform. I know my constituents appreciate it.

I would like to start by reading to you the following statement regarding the regulatory burden in our country. Secretary of Treasury Timothy Geithner has said, "I'm sympathetic to the argument you want to be careful to get the rules better and smarter, but I don't think there's good evidence in support of the proposition that it's regulatory burden or uncertainty that's causing the economy to grow more slowly than any of us would like."

That's a pretty interesting statement from someone I believe doesn't have a lot of private sector experience. It's also poignant considering a Gallup Poll was released yesterday that states of the employers who aren't hiring, 46 percent are worried about new government regulations. That's right; half of the employers who aren't hiring are doing so because of government regulations.

This isn't just a statistic either because I have employers from back in Texas where real jobs are created, come into my office everyday and say that regulations are holding back their hiring. And it's not just from one department either; they come from every agency: EPA, Department of Energy, Labor, FDIC, SEC, obviously HHS, and the list goes on...

And then you have the President arguing for the need to streamline regulations, but his administration officials say regulations don't slow hiring. It doesn't add up. What's worse than having an administration that imposes job strangling regulations is one that does so and then pretends it doesn't!

After talking to our witnesses here who are the real job creators, not the government, I hope we can develop a greater understanding of what is we should be doing, or not doing, to help create jobs.

Thank you Mr. Chairman and I yield back.

Mr. STEARNS. The gentleman yields back.

And the gentlelady from Tennessee, Ms. Blackburn, is recognized for 1 minute.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you. Welcome to our witnesses.

We have referenced Administrator Sunstein and the actions on Executive Order 13563 and in that, when he came to us, he testified that the President's executive order "would identify rules that have been outmoded, ineffective, insufficient, or excessively burdensome," and the President wrote in the Wall Street Journal, "today, I am directing Federal agencies to do more to account for and reduce the burdens regulations may place on small businesses." Well, unfortunately, what has seemed to come to pass is the testimony and the writing have not given what we have seen take place in the marketplace with the increase of regulations, 4,000 new regulations last year, nearly 80,000 new pages in the Federal Register. The Gallup Poll has been mentioned. We know that regulation is stifling businesses.

We are looking forward to hearing from you and getting first-hand information of specific examples that this is prohibiting you from pursuing jobs growth and innovation in this country.

I yield back.

Mr. STEARNS. The gentlelady yields back.

We have an additional 30 seconds. Anyone wish—if not, then we recognize Mr. Waxman for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Mr. Chairman, this is our eighth hearing today on regulatory reform, and if today's hearing is anything like the first seven, we are not going to hear much about ensuring that regulations are carefully tailored to meet their need.

This hearing is titled "Regulatory Reform Series 8—Private Sector Views of the Regulatory Climate One Year After the Executive Order" and what you have are four people who are going to tell us that they are unhappy, but do they represent the whole private sector? Are we going to hear a balanced view of how these regulations are operating? We, at the request of the Democrats, have two witnesses at the table who are going to give a different point of view, and the chairman wasn't even willing to acknowledge them and welcome them to this hearing. I am very pleased they are here and I appreciate the chairman giving us some witnesses to give another point of view.

But the point that I am trying to make is this is not a fact-finding hearing to understand whether we need changes in the regulatory system; this is a hearing to hear anecdotes from four people from four different industries about their complaints. And I don't want to diminish or minimize the genuineness of what they have to say, but this is not a balance.

For example, we are going to hear from fellow Californian, Mr. Andrew Puzder, who runs Carl's Jr. and Hardee's restaurant chains, and he is here to tell us that he doesn't like the inflexible and costly regulations stemming from the Affordable Care Act, although he glosses over the flexibility that allowed his company to receive a waiver from important medical loss ratio regulations. He is also going to criticize the new menu labeling laws. I am interested in his criticism, but that law was supported by the National Restaurant Association. They are in the private sector as well and they strongly supported these regulations. They called it a win for both restaurant owners and guests.

We also have Kimber Shoop of the Oklahoma Gas and Electric Company. His company received important benefits from the Affordable Care Act, collecting almost \$700,000 to help continue providing affordable healthcare coverage to their early retirees. But that is not why he is here; he is here to complain about regulations that he finds troublesome. Well, what we have is a handpicked group of four people to give a certain perspective on regulations. And this perspective is the Republican perspective that we have been hearing over and over and over again. I could call it a rush to judgment, but it is not even that. It is a statement of a political point of view. This hearing, as the others we have held on the subject, have been focused on politics over policy, more focused on attacking the President than working with us and him in a bipartisan way to solve America's problems.

I don't have high hopes for this hearing, although I am pleased that the witnesses are here and pleased that we have two additional witnesses to give some bit of another point of view. We can't make decisions by anecdote. We have got to have data. We have got to have debate. We have got to hear different points of view as we are urged to make decisions.

But I have high hopes for one of our witnesses to clear up an important matter from a previous committee hearing. Three years ago, the Energy and Environment Subcommittee held a hearing on climate change, and at that hearing, Dr. Patrick Michaels from the Cato Institute testified that widely accepted scientific data has overestimated global warming and that regulation enacted in response to that data could have a "very counterproductive effect." He was the only scientist to testify that climate change didn't warrant congressional action. After that hearing, we discovered information that appeared to indicate that Dr. Michaels had made misrepresentations to the committee concealing some of his financial support from big energy business. Representative Welch asked him about it at that time what his financial relationships were with certain energy companies for the record. He never directly answered the question.

Today, Barbara Walz, the representative of Tri-State, will be testifying. We sent a letter to her in advance of this hearing because public documents indicate that Tri-State funded Dr. Michaels' work to discount the seriousness of climate change. I am sure that is in the interest of the company but that might well indicate that he had some kind of reason to come up with the conclusions he wanted. I think we need to, in this committee, understand this matter further. He appeared before our committee, presented himself as

an academic researcher discounting his ties to polluting industries. I think clarifying this will be very helpful.

And that is about the only thing I hope that we may be from the positive point of view out of this hearing other than a lot of genuine, heartfelt complaints.

Thank you, Mr. Chairman.

Mr. STEARNS. And I thank the distinguished ranking member of the full committee.

I now will welcome our witnesses, and I will start to my right. Mr. Williams, we are delighted to have you here. Howard Williams is the vice president and general manager of Construction Specialties, Incorporated. We also have Mark A. Mitchell, who is a doctor and co-chair of the Environmental Health Task Force, the National Medical Association. You are welcome. And Mr. Luoto is president of Cross and Crown, Incorporated. We have Mr. Shoop. Mr. Sullivan, I think, introduced him but I will mention again that he is a senior environmental attorney, Oklahoma Gas and Electric Company. And we have Barbara Walz, and the distinguished ranking member will introduce her, as well as Mr. Gardner.

Ms. DEGETTE. Well, I am delighted, Mr. Chairman, that Ms. Walz is here today. I have worked with her and her company for many years on a lot of issues and we might disagree today, but we are good friends and it is delightful to see her. And I will yield to Mr. Gardner, who actually her company is in his district.

Mr. GARDNER. Well, I thank the ranking member for yielding and welcome Ms. Walz as well to the committee. Thank you very much for your time and to all the witnesses for being here today. If you fly into Denver from the East Coast, you fly over my district, which is 32,000 square miles on the eastern plains of Colorado. It is a very large district, and you have got 44 not-for-profit systems that are located in your district. And many of them are in my congressional district, and I thank you for the work that you do to make rural Colorado work.

Mr. STEARNS. And our last witness is Andy Puzder, CEO of CKE Restaurants. Mr. Waxman is not here. Having been a franchisee of motels and watched all the regulations come down from the company to me, I had to spend all the money to implement it as a franchisee, so my perspective was different than perhaps the Restaurant Association. I had three or four restaurants, I had five or six motels, so I found this crushing regulation just put in perspective having been a franchisee.

But with that, Mr. Puzder, we are going to allow you to start your opening statement. I am sorry. We have to swear you in.

As you know, the testimony you are about to give is subject to Title XVIII, Section 1001 of the United States Code. When holding an investigation hearing, this committee has the practice of taking testimony under oath. Do any of you have any objection to testifying under oath? No? The chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today? In that case, would you please rise and raise your right hand? I will swear you in.

[Witnesses sworn.]

Mr. STEARNS. Now, you may give your 5-minute opening, Mr. Puzder.

TESTIMONIES OF ANDREW F. PUZDER, CEO, CKE RESTAURANTS, INC.; BARBARA WALZ, SENIOR VICE PRESIDENT FOR POLICY AND ENVIRONMENTAL, TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.; KIMBER L. SHOOP, SENIOR COUNSEL, OKLAHOMA GAS AND ELECTRIC COMPANY; ROBERT A. LUOTO, PRESIDENT, CROSS AND CROWN, INC.; MARK A. MITCHELL, M.D., CO-CHAIR, ENVIRONMENTAL HEALTH TASK FORCE, NATIONAL MEDICAL ASSOCIATION; AND HOWARD WILLIAMS, VICE PRESIDENT AND GENERAL MANAGER, CONSTRUCTION SPECIALTIES, INC.

TESTIMONY OF ANDY PUZDER

Mr. PUZDER. Thank you, Chairman Stearns, Ranking Member DeGette, and members of the subcommittee. The Virgin Islands representative isn't here, so I can safely say that we have restaurants in every one of your districts, and it is a pleasure to be here today. I want to thank you for inviting me to testify before you on our Nation's regulatory climate. I would also point out that we do have representatives of the National Restaurant Association and the National Council of Chain Restaurants here today to hear the testimony. So while I do speak for myself and not on behalf of those organizations, they are present.

We own 3,250 restaurants in 42 States and 25 foreign countries under the Carl's Jr. and Hardee's brand names. With our franchisees, as the chairman mentioned, we employ about 70,000 people. Our company creates jobs and helps generate economic prosperity by building new restaurants. Each new restaurant we construct creates 25 jobs in the restaurant itself. We invest over \$1 million in the community where we construct those restaurants. But our job creation goes way beyond the restaurants. Last year, we spent \$1.25 billion for job-creating capital projects, media and advertising, supplier products and services, creating jobs in concentric circles emanating from our restaurants throughout our Nation's economy. When our ability to build new restaurants is impeded, we create few jobs.

Our company and its franchisees, all of whom are small business owners, are facing ever-increasing regulatory burdens that make it more difficult to open and operate profitable businesses. I am very concerned that in coming years we will be unable to create as many jobs as we would like due to increased expenses caused by various regulatory statutes and the associated regulations, particularly by laws such as the Patient Protection and Affordable Care Act.

An entrepreneur started our company in 1941 near where Congressman Waxman grew up, in South Central L.A. with \$315 he used to purchase a hot dog cart. Even then, he faced a couple of regulatory challenges. Today, however, to assist in opening and operating our restaurants, we have an internal 11-page list of 57 different categories of regulations with which we must comply to open and operate a simple quick-service restaurant. This list alone can discourage job-creating restaurant development. The rapidity with which legislators and bureaucrats are increasing the number of

regulations with which we must comply adds to the various challenges our company and our franchisees face.

It is my hope to give you an understanding of some of the challenges we and our small business franchisees face every day. Two provisions of the PPACA serve to make the point. I will start with the menu-labeling provision that requires disclosure of the caloric content of our products on our menu boards. As a company, we support nutritional disclosure. As I described in my written testimony, for years we have had comprehensive, effective, and economical nutritional disclosure in our restaurants. The information is also easily accessible online at our Web site. If our company and franchise restaurants are forced to replace our menu board panels, we estimate it will cost approximately \$1.5 million. To put this in context, that is 33 percent of the \$4.5 million we invested last year on job-creating new restaurant construction.

On an industry-wide basis, the FDA's regulatory analysis estimated that the initial mean cost of complying with the menu labeling regulations for chain restaurants would be \$315.1 million with an estimated ongoing cost of \$44.2 million. Yet, as noted in my written testimony, independent research done to date demonstrates that caloric menu labeling has no impact on consumer eating habits. In other words, this may be a regulation that achieves little or nothing but will impose large, unnecessary costs, reducing both job creation and growth. Nutrition disclosure is important but it can be accomplished effectively and economically. The current law simply fails in each of these respects.

In my written testimony, I suggest a compromise that would more efficiently and economically achieve the menu labeling law's objectives. I have a number of letters with me from Members of the House and the Senate, Republicans and Democrats, including Representative Gardner, who is with us today, and Senator Feinstein from my home State, expressing concern with the impact of the menu labeling law on the restaurant industry.

I hope we can reach some accommodation on this law that will effectively and economically accomplish the law's objectives without imposing unnecessary costs and burdens. It can be done and we are willing to put in the time and effort to do so.

Now, to debate the ACA's mandatory medical coverage provisions, I am not an expert on healthcare law other than to know how it impacts our company. I also know there are people who believe universal health insurance coverage is beneficial and I am not here to debate that. However, there is a sacrifice that must be made to gain benefits. The question is whether the costs are worth the benefits. The PPACA and associated regulatory framework will eliminate job creation and opportunity. The best estimate of our healthcare consultants, Mercer Health and Benefits, LLC, is that the PPACA will increase our healthcare costs by approximately \$18 million per year should it be implemented as we currently understand the regulations. That is a 150 percent increase from the \$12 million we spent on healthcare last year and approximately four times the 4.5 million we spent on job creating new restaurants.

At this point, we do not intend to drop coverage for our employees, but the money to comply with the PPACA has to come from somewhere. We use our revenues to pay our bills and expenses, to

pay down our debt, and we reinvest what is left in our business. This is how we grow and create jobs. There is no corporate pot of gold we can go to to cover increased healthcare costs. New unit construction could cease if we have to allocate the monies for that construction to the PPACA, and building new restaurants is how we create jobs. We would also have to reduce our capital spending, and capital spending not only creates jobs but is important to maintaining and growing our business. We would need to reduce the number of our full-time employees, increase the number of our part-time employees. We would need to automate positions where we could and reduce compensation for the positions we retain.

Mr. STEARNS. I need you to sum up. You are a little over.

Mr. PUZDER. Well, I would sum up by saying what the business community wants is not laissez-faire government. I understand completely that we need regulations to accomplish things that the private sector would not accomplish on its own, and I know that people consider the PPACA a very important piece of legislation and that nationalized health insurance is something that people want to pursue. What I am here to tell you today is, one, on the menu labeling, we can do it better and accomplish your objectives more efficiently than they are being accomplished now. If this is the path that we go down, it will eliminate job creation. It will reduce job creation and we will have to reduce it at our company.

[The prepared statement of Mr. Puzder follows:]

*Written Testimony of Andrew F. Puzder,
CEO of CKE Restaurants Inc.,
On the PPAC's Impact on Job Creation and Economic Growth
Before the House Energy and Commerce Committee's
Subcommittee on Oversight and Investigations*

I.
Introduction

I want to thank Chairman Stearns and the other Committee members for giving me the opportunity to discuss the regulatory issues impacting CKE Restaurants, Inc. and American businesses in general. An open dialogue between legislators, regulators and the business community on these issues is essential to ensure our nation's economic success. No institution, individual or group of individuals is solely responsible for rebuilding our economy. Rather, it is our collective responsibility. I am committed to working with you to figure out ways to create a more business friendly and prosperous economic climate while addressing the important social policy issues facing our nation.

Today's labyrinth of State and Federal regulations controls every aspect of economic activity; suffocates America's entrepreneurial spirit, and creates uncertainty stifling growth and prosperity. Perhaps this is what led President Obama to sign Executive Order 13563 in January of 2011. As you all know, this executive order calls for improving regulation and regulatory review. In signing this Executive Order, President Obama clearly recognized that overregulation is a problem. The Executive Order's impact is less clear. Executive Order No. 13563 is available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

The topic of overregulation, of course, is not a new one. The Office of Advocacy of the US Small Business Administration stated in its 2010 Report that "[a] comprehensive list of regulatory influences that affect one's daily existence is indeed extensive and overwhelming to track or sum up." It noted that "[t]he cost of government regulation gets stirred into the indistinct mixture of countless economic forces that determine prices, costs, designs, locations, profits, losses, wages, dividends, and so forth." It concluded that "the cost of federal regulation in the United States increased to more than \$1.75 trillion in 2008" or "14 percent of US national income." In other words, the cost of federal regulations alone exceeds our annual budget deficit.

While this is an astounding sum, the SBA Report notably deals *solely* with the costs of Federal regulations in place as of 2008 and fails to include Federal regulations or laws passed since 2008 such as the Dodd Frank Act or the Patient Protection and Affordable Care Act ("PPACA"). In addition, the Report fails to cover the costs of state regulations. Rather, it notes that "[r]egulatory agencies in the 50 American states have promulgated hundreds of thousands of regulations that are superimposed on federal regulations." SBA Report available at: <https://docs.google.com/viewer?url=http://www.sba.gov/advo/research/rs371tot.pdf>.

To make matters worse, State and Federal governments continue to add new regulations to the books at a dizzying pace. A recent *Investor's Business Daily* article states that "[t]he number of pages in the Federal Register — where all new rules must be published and which serves as proxy of regulatory activity — jumped 18% in 2010." According to this article, "[t]he Federal Register notes that more than 4,200 regulations are in the pipeline. That doesn't count impending clean air rules from the EPA, new derivative rules, or the FCC's net neutrality rule. Nor does that include recently announced fuel economy mandates or eventual ObamaCare and Dodd-Frank regulations." John Merline, *Regulation Business, Jobs Booming Under Obama*, *Investor's Business Daily*, (August 15, 2011), <http://news.investors.com/Article/581555/201108151901/Regulatory-Agencies-Staffing-Up.htm>.

On top of these new regulations, the old regulations never seem to go away. As such, the regulatory burden grows over time with very little thought given to whether some old rule that may either be obsolete or not cost effective should be removed from the books before imposing new burdens. President Obama's Executive Order on improving regulations has a section that calls on agencies "...to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order No. 13563, Section 6 (January 18, 2011), <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

The restaurant industry provides an excellent example of an industry dealing with overregulation. Our Company consists of a large business (CKE which owns about 30% of our restaurants) and many small businesses (our franchisees which own about 70% of our restaurants). As such, we are sensitive to the needs of both large companies and small businesses. To assist in opening and operating our restaurants, we have an internal *11 page list* of the *57 different*

categories of regulations with which we must comply in opening and operating a simple quick service restaurant. This list alone can discourage job creating restaurant development. The rapidity with which legislators and bureaucrats are increasing the number of regulations with which we must comply adds to the various challenges our Company and our franchisees face.

I want to make something clear at the outset. I believe that our country needs government regulations to advance a number of social goals which the unfettered market will not accomplish on its own. My frustration is twofold.

First, many regulations are written in a way that imposes substantial costs that are unnecessary to achieve the regulation's goal. The menu labeling legislation, passed as part of the PPACA and which I discuss below, falls into this category. I can understand why Congress wants consumers to have nutritional information about the foods they consume. But why must that information be included on the menu boards of fast food restaurants at a cost of millions of dollars the industry could otherwise spend on building new restaurants and when restaurants could more effectively post such information separately far more economically and effectively? This is particularly true since virtually all of the research done to date has shown that posting caloric information fails to change consumers' food choices. What is the purpose of imposing costs on small businesses like restaurant franchisees when it returns nothing in terms of more effective consumer information?

Second, our system lacks any meaningful mechanism for tracking the cost of regulations as a whole and balancing that against the need for businesses to use their profits to expand, grow and thereby create jobs and prosperity. Regulations are a kind of tax. Just as taxes are necessary to raise the revenue government needs, so regulation is necessary to accomplish important goals the market will not accomplish on its own. But economic growth is also important both to individuals and government. Nonetheless, while most government officials recognize that raising taxes has a dampening effect on economic growth, there seems to be no similar acknowledgement with respect to the impact of regulatory costs.

We are daily confronted with a maze of Federal regulations ranging from the EPA's Clean Air Act regulations and universal waste disposal regulations and OSHA's various workplace regulations to laws and regulations as esoteric as the Employee Polygraph Protection Act and the Genetic Information Non-Discrimination Act.

Certainly, when viewed independently of their collective impact, there is usually a well-intentioned reason for each of these laws and each regulation the bureaucrats create to implement them. The danger lies in their overreaching, overlapping and often inconsistent nature, their continued existence despite changed circumstances that render them irrelevant, and the inability of government to simplify or rationalize compliance. These policies are creating structural impediments to opening and operating American businesses that all too often cause those in business to give up in frustration, reducing economic growth and dampening the entrepreneurial spirit so essential to our prosperity.

That is why I have been so vocal on this issue. I believe that, whatever a legislator's position on a proposed new regulatory statute, he or she should recognize that the regulation comes with a cost. Regulated businesses must spend money both to determine what the new law requires and then to comply with it. Recognizing this reality does not mean that Congress should decline to pass regulatory statutes. Rather, it means only that Congress should, on a bipartisan basis, be much more open to structuring such laws so as to maximize the benefits while minimizing any unnecessary burden. This is what businesspeople are really looking for: Not laissez faire government, but government that recognizes the contributions of business to economic growth and is sensitive to the difficulties which new regulations can create unless they are carefully tailored to meet both the legitimate needs of business and the social goal the regulations seek to accomplish.

I will focus on the PPACA's impact as this Subcommittee's jurisdiction covers the PPACA. The purpose of my testimony is (i) to describe our company and how we create jobs, (ii) to describe our long standing commitment to meaningful nutritional disclosure, (iii) to discuss the PPACA's proposed menu labeling requirements' ineffectiveness, burdens and unnecessary expense and (iv) to discuss the severe economic burdens the PPACA's mandatory health insurance provisions impose on American businesses and our company in particular.

As matters currently stand, the PPACA is creating significant concern in the American business community with respect to the increased costs and regulatory burdens it will undoubtedly impose. These costs and burdens are increasing the risks of new business ventures and discouraging investment. When entrepreneurs and businesses are unable to forecast with reasonable certainty that a venture will return a profit they will not invest, they will not grow and they will not create jobs. The predictable result is an uncertain and jobless recovery.

We respectfully request that Congress review the PPACA's provisions to determine which can be administered in a way that reduces costs for the businesses they impact. We further request that Congress review the PPACA's provisions to determine which provisions fail to accomplish anything productive and eliminate such provisions. If done effectively, this review would encourage job creation and prosperity as well as better government. As we all work to pull our nation out of the current economic malaise, why hurt American businesses if it gives you nothing in return?

II.

Company Description and Job Creation Impact

CKE Restaurants, Inc. is a quick service restaurant company that owns or franchises over 3,250 restaurants in 42 states and 25 foreign countries. We are headquartered in Carpinteria, California with regional headquarters in Anaheim California and St. Louis, Missouri. Carl N. Karcher, an Ohio native with an 8th grade education, and his wife Margaret, a California native, started our Company in 1941 with a hot dog cart in South Central Los Angeles.

We employ about 21,000 people in the United States. Our domestic franchisees employ approximately an additional 49,000 people. As such, we account for about 70,000 jobs in the United States.

We provide significant employment opportunities for minorities. Domestically, 64% of our Company employees are minorities. We also provide significant employment opportunities for women. Domestically, 63% of our employees are women. We are proud of the Company's diversity.

Our Company owns and operates 892 of our 3,243 restaurants. Our franchisees own and operate the remaining 2,351 restaurants of which 1,928 are in the United States. Our Company-owned restaurants average over \$1.2 million in sales per year. Each restaurant employs about 25 people and has one General Manager. Our General Managers are 57% minorities and 66% women. They are 39 years old on average. However, their ages range from 18 to 71. Several of our Executive Vice Presidents and Senior Vice Presidents started as restaurant employees and learned the business as restaurant General Managers.

On average, a General Manager runs a \$1.2 million business with 25 employees and significant contact with the public. He or she is in charge of a million-dollar-plus facility, a profit and loss statement and the success or failure of

a business. Our Company-owned restaurant General Managers earn an average salary of about \$45,000 and can earn a salary of well over \$50,000, plus a substantial performance-based bonus and benefits, including health insurance. For General Managers and above, the Company covers a portion of the cost (60%) of our employees' medical insurance and offers a number of alternative plans with 4 coverage options, ranging from employee to family coverage. Below the General Manager position, the Company offers an employee funded low cost limited medical benefits plan with 3 coverage options, ranging from employee to family coverage.

Our franchisees, who are generally small business owners and entrepreneurs themselves, often started out as General Managers in our restaurants or our competitors' restaurants. We have 227 franchisees nationwide. These franchisees exemplify the entrepreneurial spirit on which we built our Company and they instill that spirit in their over 49,000 employees and managers.

While we directly account for about 70,000 jobs in the United States, our Company's impact on the Nation's employment rate goes well beyond the number of people we directly employ. The hundreds of millions of dollars we spend on capital projects, services and supplies throughout the United States create thousands of jobs and generate broader economic growth.

For example, in the past six years and despite our Nation's economic problems, our Company and franchisees have built over 300 new restaurants in the United States. Every time we build a restaurant, we make a substantial investment in the community where that restaurant is located (well over \$1 million). We use local contractors on the project and we create, on average, 25 new jobs including a new General Manager position. When we add about 8 new restaurants, we add a District Manager.

We also spend millions of dollars domestically each year all of which enhances our Nation's economic strength. Last year alone, our Company spent approximately \$60 million on capital expenditures nationwide. Over the past five years, our Company spent \$588 million on capital expenditures. These expenditures represent investments in our business and include new unit construction, remodels, property improvements, and infrastructure improvements. All of these expenditures create jobs and economic growth. Our franchisees' capital expenditures significantly increase these numbers.

In addition to our capital expenditures, last year we spent \$30 million on restaurant repairs and maintenance. This would include amounts we pay to small businesses for projects such as landscaping, air conditioning repair, window cleaning, and asphalt and parking lot repairs. Our franchisees' repairs and maintenance expense again significantly increases these numbers.

We also spend millions of dollars on media advertising to television stations, radio stations, newspapers and other media outlets nationally. Last year alone, we spent \$175 million. All of these expenditures create jobs and growth.

We support our nation's agricultural community with purchases of domestically produced or packed food and paper products. Last year, our food and paper expense was approximately \$1 billion.

We also support numerous charitable organizations throughout the country. For example, this year we raised over \$1 million for military families and veterans through our Stars for Troops program. We donated these monies to Homes for our Troops and USA Cares. Over the past 6 years, our Carl's Jr. and Hardee's, Company and Franchise restaurants raised over \$4.1 million through our Pink Star program. We donated these monies to the National Breast Cancer Foundation for regional grants to hospitals in Los Angeles and St. Louis. In California, Carl's Jr. has pledged \$1 million to Cottage Hospital in Santa Barbara. In North Carolina, Hardee's donated \$1 million to build the Children's Oncology Center at Duke Hospital. In St. Louis, Hardee's donated \$250,000 to the Rankin Jordan Pediatric Rehabilitation Center.

In addition to these examples, our Company and our franchisees support a host of other worthy causes through corporate and individual contributions and our restaurants routinely raise monies or contribute to the support of their communities' schools, civic organizations and sports teams.

In summary, our Company and franchisees employ about 70,000 people nationwide, provide meaningful management positions and experiences for a broad range of people, and expend hundreds of millions of dollars for job creating capital projects, media and to our suppliers. We also pay millions of dollars in taxes and support deserving charitable organizations.

III.

We Have an Historical Commitment to Health Conscious Consumers and Meaningful Disclosure of Nutritional Information

We accomplish the foregoing while providing a variety of low cost, high quality food items at convenient locations for all segments of the economy, from the very poor to the well to do. These products include Black Angus Beef Hamburgers, Turkey Burgers, whole muscle skinless Chicken Breast Sandwiches, Hand Breaded Chicken Tenders and Chicken Sandwiches, Salads, hand scooped Milk Shakes and Malts, and a number of breakfast items, among others. We are dedicated to offering our customers premium quality products and service at a level unparalleled in the quick service segment.



We sell big, juicy delicious hamburgers and French fries, as well as a variety of other products. We are not shy about our menu items. They are all high quality products that provide important nutrients to our customers -- and they taste great.

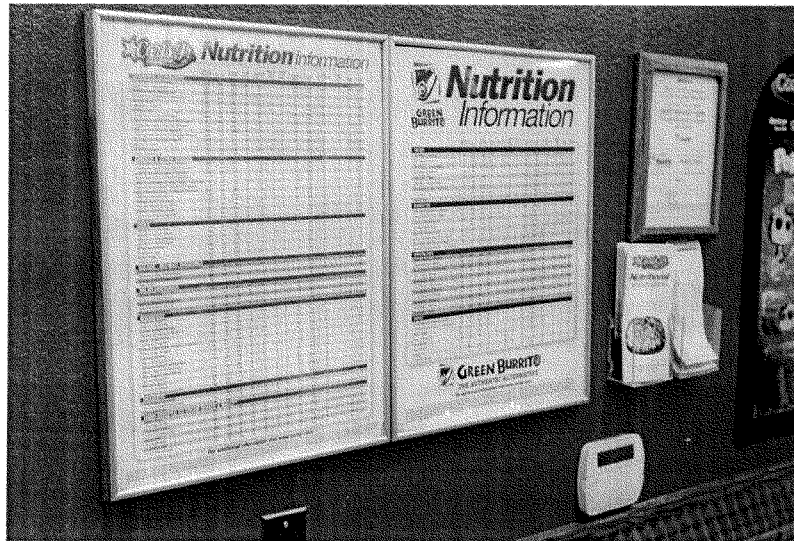
People can eat at our restaurants every day, and maintain a diet of which any physician would thoroughly approve, with no more knowledge or prudence than they would need to eat well at home. Moreover, they can afford to do so. We are very proud that, even in these difficult economic times, our restaurants offer families the opportunity to enjoy a pleasant experience eating out at a restaurant with a friendly atmosphere and well trained staff. Many of our customers are lower income parents who can afford to take their children to breakfast, lunch or dinner at our restaurants – with a menu the whole family can enjoy – who simply would be unable to pay two or three times as much at a higher end restaurant.

It is our job to offer great tasting, high quality, healthy products that our customers want to eat and we take great pride in doing so. For example, in 2011, we worked with editors of *Men's Health* magazine and the *Eat This, Not That* line of books to create a line of Turkey Burgers at Carl's Jr. and Hardee's. Just last week *Health.com* did a piece on "The Best and Worst Burgers" and our Turkey Burger was singled out as "Best Turkey Burger." Amanda MacMillan, *The Best and Worst Burgers* (Health.com, 2/6/12), <http://www.health.com/health/gallery/0,,20504336,00.html>. CKE also earned the Turkey on the Menu (TOM) Award in the fast food category from the National Turkey Federation for introducing a variety of charbroiled turkey burgers and offering healthier options to consumers.

Put simply, we believe it is our corporate responsibility to provide consumers full nutritional information about our products. *We have absolutely no objection to disclosing nutritional information to our customers and we have done so for years and prior to any government compulsion.* We believe there should be free choice and individual responsibility with respect to decisions regarding what people choose to eat. We believe the products we sell are healthful and, if consumers want different menu items, or more choices of products that have fewer calories, we are happy to serve them.

4.*We post the caloric and fat content of our products in our restaurants and have done so for a number of years*

A poster such as the one below hangs at eye level in every Carl's Jr. and Hardee's restaurant. Although difficult to read in the photo below, the actual poster in the restaurants is framed, 20 inches tall by 16 inches wide and very legible. It simply cannot be missed by any of our customers interested in the information. *For each of our products it discloses serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein.* We have had the modern versions of these posters in our Carl's Jr. restaurants since 2003 and in our Hardee's restaurants since 2005. Our best recollection is that we originally put nutritional disclosure posters in our Carl's Jr. restaurants in the mid-1990s. At Carl's Jr. we also make this information available in pamphlet form at the restaurants as you can see to the right of the posters in the photos below. We have done so for many years and before any government entities compelled us to do so. We simply believe such information should be available for consumers who wish to see it.



[illegible]

For additional information visit www.carlsjr.com

For more information on information from www.vanguard.com.

B.

On our web site, consumers can check the fat and caloric content of our products and can even create a meal and check the total nutritional information for that meal with our Nutritional Calculator

Most of the examples below are from the Carl's Jr. web site <http://www.carlsjr.com/menu>. Hardee's has its own web site with the same features. <http://www.hardees.com/>.

This is an example of how our Nutrition Calculator works from our Carl's Jr. web site. In this example, the consumer selected a Six Dollar Burger low carb style with an order of small fries and a Coke Zero. The nutritional information for the meal appears in the red line entitled "Totals."

DELICIOUS FOOD. TASTY FACTS.

Menu Search

BREAKFAST CHARBROILED BURGERS CHICKEN, SALAD & MORE SIDES DESSERTS BEVERAGES ALT OPTIONS

NUTRITION CALCULATOR

Build Your Meal, Break It Down and Get the Nutritional Facts.
Curious about calories? Click on menu items to the left and add them to your meal.

	Serving Size (g)	Calories	Calories from Fat	Total Fat (g)	Saturated Fat (g)	Cholesterol (mg)	Sodium (mg)	Carbohydrates (g)	Dietary Fiber (g)	Sugars (g)	Protein (g)
<input type="checkbox"/> The Low Carb Six Dollar Burger	299	570	389	43	19	120	1300	0	1	5	38
<input type="checkbox"/> Coca-Cola Zero™	20 oz	0	0	0	0	0	10	0	0	0	0
<input type="checkbox"/> Natural Cut French Fries - Small	105	310	150	16	2.5	0	610	40	4	0	5
Totals		425	800	510	58	21	120	2010	49	5	41

PDF DOWNLOADS

MENU MAY VARY BY LOCATION.
All of our products are prepared in the same kitchen area. Persons with food sensitivity, allergies, special dietary needs, or specific dietary requests and/or concerns should consult a medical professional of their own selection regarding the suitability of our food products.


© 2011 Carl Karcher Enterprises, Inc. Featured products available at participating locations only. Privacy Policy | Terms & Conditions

[Menu & Nutrition](#) | [Contact Us](#) | [Print a Carl's Jr. |](#) [Exclusive Offers and Emails](#)

C.




We offer low fat, low calorie, low carbohydrate, vegetarian and gluten sensitive products and our web site has an Alternative Options Menu offering a number of items for our consumers.

http://www.carlsjr.com/system/pdf_menus/21/original/CJ_AlternativeOptionsMenu.pdf?1294692189.



Alternative Options Menu

Order or modify many of our existing menu items to fit your diet needs.

LOW CARB IT	TRIM IT
<p style="text-align: center; background-color: #f0f0f0; margin: -10px -10px 10px -10px;">LOW CARB IT</p> <p style="text-align: center;">These products contain less than 15 grams of Carbs</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p>The Low Carb Six Dollar Burger® Just like the original Six Dollar Burger® but with the chicken and a lettuce wrap instead of on a bun.</p> <p>Low Carb Chicken Club® The Charbroiled Chicken Club® with a lettuce wrap instead of on a bun.</p> <p>Original Grilled Chicken Salad Order this salad with Blue Cheese Dressing and eat the chicken.</p> </div> <div style="text-align: center;">  <p>Charbroiled BBQ Chicken® Sandwich Our original low fat menu item. Order it as is, or get it with a lettuce wrap as the Low Carb Charbroiled BBQ Chicken® Sandwich.</p> <p>Trim It Famous Star® The Famous Star® with no mayo on a lettuce wrap bun.</p> <p>Original Grilled Chicken Salad Order this salad with Low Carb Balsamic Vinaigrette.</p> </div> </div>	<p style="text-align: center; background-color: #f0f0f0; margin: -10px -10px 10px -10px;">TRIM IT</p> <p style="text-align: center;">These products contain 430 or fewer calories</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p>The Veg It Guacamole Six Dollar Burger® The Guacamole Chicken Six Dollar Burger® without the meat patty or bacon.</p> <p>Fried Zucchini Order our signature side items.</p> <p>Side Salad No charge for substitution of free in a corner.</p> </div> <div style="text-align: center;">  <p>Low Carb Famous Star with Cheese® The Famous Star® with Cheese but in a lettuce wrap instead of on a bun.</p> <p>The Low Carb Six Dollar Burger® Just like the original Six Dollar Burger® but with 98% lean beef in a lettuce wrap instead of on a bun.</p> <p>The Low Carb Guacamole Bacon Six Dollar Burger® The Guacamole Bacon Six Dollar Burger® in a lettuce wrap instead of on a bun.</p> </div> </div>

For more information, please visit www.carlsjr.com/alternativeoptions. Reviewed April 2010.

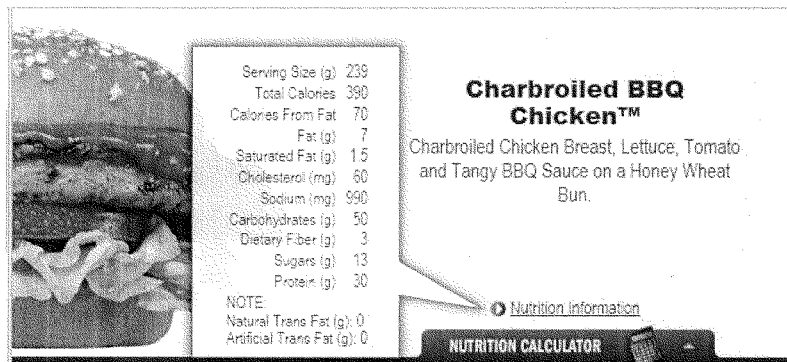
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We believe our Alternative Options Menu is unique, particularly with respect to our Vegetarian and Gluten Sensitive options.

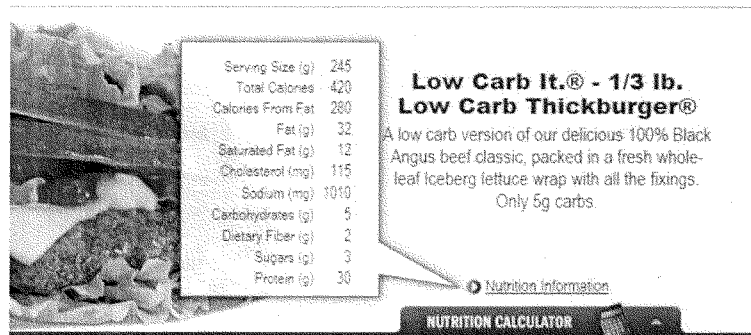
D.

Our traditional menu also offers a number of low fat and low calorie products and has done so for many years.


We have a line of whole-muscle, skinless chicken breast products which we char-broil and serve on honey wheat buns. Our Bar-B-Q Chicken Sandwich, for example, has 7 grams of fat. When consumers view our products on our web site, they have the option of getting full nutritional information by clicking on the “Nutritional information” option as in the pictures below.



Customers can order any of our products on a honey wheat bun or low carb style as we use whole-leaf lettuce which can serve as the bun. This is the information for a Hardee's Thickburger low carb style.



We also have a variety of salads which customers can order with low-fat or non-fat dressings. We have had salads in our restaurants since at least the 1970s.



Serving Size (g)	360
Total Calories	320
Calories From Fat	100
Fat (g)	11
Saturated Fat (g)	3.5
Cholesterol (mg)	70
Sodium (mg)	850
Carbohydrates (g)	29
Dietary Fiber (g)	5
Sugars (g)	17
Protein (g)	27


Cranberry, Apple, Walnut Grilled Chicken Salad
Grilled chicken, feta cheese and apple slices on a bed of spring salad mix. Served with dried cranberries, glazed walnuts and a raspberry vinaigrette.

NOTE:
Natural Trans Fat (g): 0
Artificial Trans Fat (g): 0
Does not include dressing...

[Nutrition Information](#)

NUTRITION CALCULATOR

Last year, we added a line of Turkey Burgers to our menu each of which are less than 500 calories. In addition, consumers can order any of our burgers with a Turkey Burger patty.



Serving Size (g)	268
Total Calories	490
Calories From Fat	200
Fat (g)	23
Saturated Fat (g)	4.5
Cholesterol (mg)	60
Sodium (mg)	960
Carbohydrates (g)	45
Dietary Fiber (g)	3
Sugars (g)	10
Protein (g)	29

Turkey Burger
Charbroiled Turkey Burger, Special Sauce, Mayonnaise, Red Onion, Tomato, Whole-Leaf Lettuce and Dill Pickle Chips on a Honey Wheat Bun.

NOTE:
Natural Trans Fat (g): 0
Artificial Trans Fat (g): 0

[Nutrition Information](#)

NUTRITION CALCULATOR

We also have a number of healthful low fat, low calorie beverages including 1% fat milk, orange juice, Vitamin Water Zero, Dasani bottled water, and Coke Zero, among others.



In summary, we have numerous delicious products for health conscious consumers and you can easily determine the nutritional information for any of our products in the restaurant or on our web sites. You can eat low fat or low calorie items in our restaurants and we are happy to sell these products. We accomplished all of the forgoing effectively, economically and without government compulsion and without adding confusion to our menu boards.

IV.

**The Impact of The Patient Protection and Affordable Care Act
And Its Proposed Regulations on Our Ability to Avoid Layoffs, Create Jobs and
Continue to Generate Economic Growth**

As noted above, we reinvest the great majority of our cash flow in our business and in the economies of the states where we do business. We do so by creating meaningful employment and management level opportunities for a diverse group of people, while reinvesting the vast majority of our cash flow in building new restaurants, remodeling existing restaurants, keeping our existing facilities in good condition, and purchasing various commodities and services.

We accomplish all of this by running each restaurant as a profitable business and keeping our overall general and administrative expenses in check. Our business is relatively simple. We generate cash flow through our restaurants, pay our bills and then reinvest in our business. At the restaurant level, we simply take our revenues (essentially our sales) and reduce them by our food, labor and occupancy expenses. What remains is our restaurant level profit. All of our economic success - all of our ability to stimulate growth and jobs - stems from our restaurant level profit. Over the past few years, our industry and our Company have managed to grow despite being forced to deal with significant challenges, including declining consumer demand due to a weak economy, rapidly increasing commodity prices and increasing energy costs.

We are also facing the negative impact of certain legislation and proposed regulations. This is true for our Company, our industry and our nation's retail industries in general. While generally well intentioned and having worthy objectives, such legislation and regulation rarely attempts to balance the costs and benefits thereof, and have the potential to add to our costs at a time when we are already facing very significant economic obstacles. We respectfully note that, unless properly structured with input from all sides, even when legislation or regulation intends to achieve something positive – such as menu labeling or universal health care – there is always a tradeoff that may hurt the very people the proposal is intended to benefit.

We know the object of these proposals is not to impair our ability to reinvest in our business or to cause layoffs. Nonetheless, such legislation and regulation could leave us and our franchisees with no choice but to materially reduce our full time workforce and our capital spending which in turn, increases unemployment

and reduces economic growth. We hope that we can work with you to minimize the unintended negative effects of any such legislation and regulation.

In particular, the PPACA presents all American businesses with huge regulatory and economic hurdles that inhibit economic growth. My testimony will focus on the menu labeling portion of the PPACA (section 4205). It will then discuss the negative impact the PPACA's mandatory health insurance provisions will have on our Company's ability to grow and create jobs.

4. **Menu Labeling**

Before discussing specific issues with respect to the PPACA's approach to menu labeling, it is important to re-emphasize that, as a company, we support nutritional disclosure. We believe our actions (as described above) before any requirements were in place clearly demonstrate that. However, we strongly oppose legislative measures which generate significant costs without any benefit and which particularly disadvantage one part of the restaurant industry. We should disclose nutritional information in a cost effective manner that is equitable and avoids giving a competitive advantage to any restaurant sector or interest group. It is in these respects that the PPACA's burdensome and expensive menu labeling provisions fail.

1. Menu Labeling Provisions Have Had and Will Have No Impact on Reducing Obesity. First, while preventing obesity was the rationale for enacting the PPACA's menu labeling provisions, the research to date has all but universally disclosed that placing caloric content on menus fails to impact people's eating habits and has no impact on reducing obesity. Below we list a number of studies and articles discussing the impact of menu labeling on eating habits.

Calorie counts don't change most people's dining-out habits, experts say, *Washington Post*, 7/6/11, http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqO1H_story.html.

Menu labels don't influence students' food choices, *Reuters*, 7/1/11, <http://www.reuters.com/article/2011/07/01/us-menu-labels-idUSTRE7605GO20110701>;

Posting point-of-purchase nutrition information in university canteens does not influence meal choice and nutrient intake, *The American Journal of Clinical Nutrition*, 6/15/11, <http://www.ajcn.org/content/early/2011/06/15/ajcn.111.013417>;

Menu labeling law doesn't register a blip at Taco Time, *Los Angeles Times*, 1/14/11, <http://articles.latimes.com/2011/jan/14/news/la-heb-menu-labeling-20110114>;

Calorie Disclosures Fail to Weight Whole Enchilada, *Wall Street Journal*, 7/8/09, <http://online.wsj.com/article/SB124700756153408321.html>;

Calorie Postings Don't Change Habits, Study Finds, *New York Times*, 10/6/09, <http://www.nytimes.com/2009/10/06/nyregion/06calories.html?scp=1&sq=menu%20labelling&st=cse>;

Study: NYC calorie postings don't change orders, *New York Post*, 10/6/09, http://www.nypost.com/p/news/local/study_nyc_calorie_postings_don_change_0N8ltUiGVwDvIkCa2OFvSN

Fast food doesn't make you fat, *Portfolio Magazine*, 6/3/08, <http://www.portfolio.com/views/blogs/odd-numbers/2008/06/03/fast-food-doesnt-make-you-fat?addComment=true>;

Too Much Information? *Why menu labeling laws are bound to fail*, *Reason Magazine*, 6/25/08 <http://reason.com/archives/2008/06/25/too-much-information>;

Are Restaurants Really Supersizing America? *UC Berkley/Northwestern University Study*, 12/30/07, <http://are.berkeley.edu/Papers/anderson08.pdf>.

Exercise Info, Not Calorie Counts, Helps Teens Drop Sodas, *National Public Radio*, Dec. 16, 2011 <http://www.npr.org/blogs/thesalt/2011/12/16/143790349/exercise-info-not-calorie-counts-helps-teens-drop-sodas?ft=1&f=1001>.

As stated in the July 6, 2011 *Washington Post* article cited above: "Evidence is mounting that calorie labels — promoted by some nutritionists and the restaurant industry to help stem the obesity crisis — do not steer most people to lower-calorie foods. Eating habits rarely change, according to several studies. Perversely, some diners see the labels yet consume more calories than usual. People who use the labels often don't need to. (Meaning: They are thin)." http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqOIH_story.html

Anecdotally, where we have already been required to add calorie disclosures to our menu boards, we have observed that such disclosure has, at best, a minimal impact on sales. More often, ironically, *consumers appear to believe fast food has more calories than is actually the case and, as a result, may consume higher calorie items once they see the actual caloric content.*

Again, providing nutritional information for consumers is a good idea. As noted above, it is something we are currently doing and have done for many years more effectively than the PPACA requires. However, in addition to being ineffective if not counter-productive, the PPACA's menu labeling provisions are economically burdensome and inequitable, discouraging both growth and job creation.

2. The Relevant Provision. The menu labeling provisions are located in Section 4205 of the PPACA which amends Section 403(q) (5) (a) of the Federal Food, Drug and Cosmetic Act (21 USC 343(q) (5) (A)). The relevant provision requires that restaurants with menu boards "disclose in a clear and conspicuous manner:"

In a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale

21 USC 343 (q) (5) (H) (II) (aa).

3. Economic Impact. This provision will be very difficult and expensive to implement as we will have to place the information on our menu boards which means cluttering them even more than they are cluttered now and going through the expense of replacing all of our existing menu boards (assuming we are unable to find a more cost effective FDA approved alternative). We estimate that the cost to replace interior and drive-thru menu board panels at domestic Carl's Jr. and Hardee's restaurants would be \$1.5 million (\$1,473,560). This will be \$1.5 million to accomplish something we are already doing less expensively and more effectively than the PPACA requires. Notably, as discussed below, the FDA estimates the costs at about \$1,100 per restaurant and the Small Business Administration's ("SBA") Office of Advocacy reports that the National Council of Chain Restaurants (NCCR") estimated the cost at about \$1,333 per restaurant. Using the FDA's number, the cost for our Company and franchised

Carl's Jr. and Hardee's restaurants would be about \$2.1 million. Using the SBA's/NCCR's estimate, our costs would be about \$2.6 million. <http://www.sba.gov/content/letter-dated-06282011-department-health-and-human-services-food-and-drug-administration>.

To put this expense in perspective, last year, our company spent \$4.5 million on job creating new restaurant development, building five new company owned restaurant (this does not include monies the franchisees spent to build franchised restaurants). Company and franchise restaurant development is how we create new jobs. Using our estimate of anticipated menu board replacement costs (which is lower than the FDA's or the SBA's estimates), \$1.5 million is 33% of the \$4.5 million our Company spent to build new Company owned restaurants for all of last year. The amount we and our franchisees would be forced to spend on new menu boards would support the opening of 1 to 1½ new restaurants and the creation of about 40 jobs in the restaurants and many more jobs outside of the restaurant.

We would obviously prefer to spend these monies building new restaurants and creating jobs rather than providing information we already provide more effectively, more comprehensively and more economically than the PPACA requires. *As opposed to just disclosing caloric content, for each of our products, our nutritional information posters already disclose serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein.* Our nutritional information posters are clearly marked and contain the facts about nutritional content so that customers can walk right up to them and read the information clearly. We firmly believe this is a far more effective communication of the information than lodging it on an already cluttered menu board that has to be read from five to ten feet away.

We are not alone in facing these increased costs. On June 28, 2011, the SBA's Office of Advocacy filed comments with the FDA suggesting that the FDA's underestimated the costs in the proposed rules for chain restaurant and vending machine nutritional labeling and that alternatives exist that would minimize the rules' impact. <http://www.sba.gov/content/letter-dated-06282011-department-health-and-human-services-food-and-drug-administration>. The SBA's comments noted that "The FDA's regulatory analysis estimated that the initial mean estimated cost of complying with the proposed [menu labeling] rule [for chain restaurants] would be \$315.1 million, with an estimated mean ongoing cost of \$44.2 million." *Id.* Obviously, the costs for our industry will be very significant.

Yet, even the FDA's \$315 million cost estimate may be low. As stated in a recent article on this subject in the *American City Business Journals*:

The Food and Drug Administration may have underestimated the cost of complying with proposed food and calorie labeling rules for chain restaurants and vending machines.

That's according to the Small Business Administration's Office of Advocacy, which urged the FDA to reassess its cost estimates and consider less-expensive alternatives.

The proposed rules, which were called for in the health care reform law, require chain restaurants and operators of 20 or more vending machines to disclose nutritional information about their food items. The FDA estimates the rules will apply to 278,600 restaurants and 10,800 vending machine operators.

The rule will cost each restaurant around \$1,100, according to the FDA, mainly for testing foods, preparing new menus and training employees. Industry groups, however, told the Office of Advocacy that their surveys of restaurants indicate the costs would be higher.

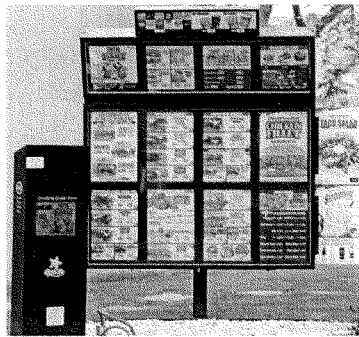
Calorie labeling rule could cost every restaurant \$1,100, *American City Business Journals*, July 8, 2011, <http://www.bizjournals.com/portland/print-edition/2011/07/08/calorie-labeling-rule-could-cost-1100.html?page=all>.

a. Interior Menu Boards. The walls that currently contain our menu boards are generally *partial* walls as we provide a clear view into our kitchens so the public can observe our food preparation process. Just above the line of sight into our kitchens is generally where we place the menu boards. This enhances our food safety and our customers comfort level as they can observe the food being prepared and the cleanliness of the restaurant. One solution to adding caloric information to our menu boards would be to make the menu boards larger which would, of course, obscure the view into the kitchen. We would lose the benefits of consumers being able to view the food preparation process.



Of course, a simple, equally effective and more economical solution would have been to make the relevant information available prominently on a wall adjacent to the menu board. This would have allowed us to make the required disclosure in an effective manner without the added expense of replacing all of our menu board panels or needlessly cluttering them and rendering them confusing.

b. Drive-Thru Menu Board Labeling. Our drive thru menu boards are not amenable to menu labeling. They are simply too small and are designed for customer convenience and speed (which are generally the two reasons customers are in the drive thru to begin with). We are generally unable to make them larger as they are already as large as local zoning authorities allow us to make them. If we were allowed to make them larger, they would already be larger.



Last year, Senator Roy Blunt (R-Mo) sent a letter to the Department of Health and Human Services, Food and Drug Administration (“FDA”) raising concerns about the drive-thru menu board labeling issue, as part of the FDA’s public comment request for its draft Section 4205 menu labeling regulations. The FDA responded stating that it was considering whether the use of “stanchions (such as free standing boards, generally placed next to the drive through menu boards) would enable customers to use calorie information when they are making selections from a drive though menu board” While this would certainly be helpful, it is difficult to see why having something adjacent to the drive-thru menu board is acceptable but having something adjacent to the interior menu board is unacceptable. We are unable to estimate the added cost of the FDA’s stanchions approach as we currently have no idea what the stanchions would look like or where we would place them. As is very typical of sweeping Federal regulation, no consideration is given to how such regulation conflicts with the requirements of literally hundreds of local jurisdictions that impose other constraints to meet other legitimate objectives.

So what it comes down to is this: The federal government has passed a law requiring us to build new signs, or buy new menu boards, and to put on those signs and menu boards information which we already provide even though it is unlikely to change eating habits, at a cost of over a million dollars that we will divert from and be unable to spend on expanding our business and creating jobs.

4. Chains with 20 or More Restaurants. The menu labeling law only applies to chains with 20 or more restaurants. 21 USC 343 (q) (5) (H) (i). In other words, if you own less than 20 restaurants, you are exempt from the law’s menu labeling requirements. The purpose of this provision is to protect small businesses from the law’s expense and negative business impact. This exemption shows that the authors of the legislation well knew that it would have a negative impact. Apart from that, it is naïve to make this distinction. First, it is simply inequitable to create a different unit cost structure for businesses above an arbitrary size threshold. Second, it is inconsistently applied, as this exemption is inapplicable to franchisees of chains that have more than 20 restaurants even if the individual franchisee owns less than 20 restaurants. In other words, small business operators who are independent get an advantage over chain restaurant franchisees even if the franchisee owns one restaurant. Our franchisees are also small business operators, and we submit that to the extent small business operators are deserving of special protection, all such operators similarly deserve protection.

Someone could argue that franchisees have the advantage of affiliating with larger chains, but franchisees pay 4% of their revenues for this privilege. As such, they are already at a competitive disadvantage from a profit perspective, but they have made a business decision that the trade off was worthwhile. When making this decision, our franchisees did not contemplate an additional economic disadvantage such as the menu labeling law now creates. Whether one of our franchisees' restaurants is across the street from a "Joe's Burgers" or a "McDonald's" makes very little difference: A competitor is a competitor.

The International Franchise Association ("IFA") submitted comments to the FDA expressing these concerns on behalf of the chain restaurant industry. As the IFA stated:

While the statute provides an exemption of the law's requirements for independent restaurants that have less than 20 locations, a small business owner that is a part of a franchise system will have to comply with the new regulations. The IFA is particularly concerned that the Proposed Rule and its requirements will create a competitive disadvantage between a single-unit franchise restaurant owner and local independent competitors.

"These new requirements will dramatically increase costs for some small businesses that are in competition with similar independent restaurants that are not subject to the requirements of the new law," said Thorman [IFA Senior Vice President of Government Relations & Public Policy]. "We are asking the FDA to ensure these rules are implemented in a way that accommodates small business owners and provides consumers with important calorie information that is clear and concise."

FDA Should Consider Economic Burden of Menu Labeling on Franchise Restaurant Owners,

<http://www.franchise.org/Franchise-News-Detail.aspx?id=54323>. See also, **Calorie labeling rule could cost every restaurant \$1,100**, *American City Business Journals*, July 8, 2011, <http://www.bizjournals.com/portland/print-edition/2011/07/08/calorie-labeling-rule-could-cost-1100.html?page=all>.

5. Conclusion. While the PPACA's menu labeling provisions may have been well intentioned, they were poorly thought out, will be both burdensome and expensive to implement and give an inequitable advantage to individuals who own less than 20 restaurants unless they are franchisees. We are already providing more nutritional information than the PPACA requires. We believe it is good

policy and good business to inform our customers in this way, even though experience has shown that such information does not change eating habits. The PPACA's menu labeling provisions are a perfect example of legislation that accomplishes very little while imposing costs that kill jobs and economic growth. Apart from the actual burden of this legislation, it has contributed to the sense – which is quite common among our franchisees – that their own government has no idea how businesses operate and no sensitivity whatsoever to the challenges they and their consumers are confronting in these difficult times.

As I have already stated, there is an increasing body of evidence that disclosure of caloric information as required by the new law has no impact on consumer buying decisions. This evidence would support repealing the law or postponing its implementation until there is greater certainty that it will have a beneficial effect. But we understand that many legislators who are committed to the idea of more consumer disclosure may be reluctant to take that step. For those legislators, a compromise is possible: Simply pass a “technical correction” to the law which makes clear that restaurants can post the required nutritional information on a wall inside the restaurant and adjacent to the menu board and that, if the restaurant provides complete nutritional information on its website, it is unnecessary to provide it in the drive thru lanes. This compromise would minimize the impact on franchisees, reduce the competitive disadvantage built into the law as currently written, and still require restaurant companies that— unlike Hardees and Carl's Jr. – currently fail to provide nutritional information to provide it.

Just as important, it would show restaurant owners around the country and business owners in general that Congress recognizes their contributions to job creation and economic growth. In the long run, this serves the interests of those in this body who are more open to business regulation because it will show that it really is possible to pass regulations in a way that minimizes the burdens on those who create jobs and opportunity in our country.

B.

Employer Mandates and Health Care Coverage

1. The Overall Impact on Employers and Job Creation. As noted above, our Company creates jobs by building new restaurants and working with our franchisees so they build new restaurants. Our restaurants create jobs both inside the store and also by spending hundreds of millions of dollars locally for

job-creating capital projects, media and advertising, and supplier products and services.

Last year, as a company, we spent \$11.8 million on health care coverage for our employees (the total cost including employee contributions was \$21 million) and \$4.5 million building new restaurants. We have been working closely with Mercer Health and Benefits, LLC, our health care consultants, to identify the PPACA's potential financial impact on our company. Mercer estimates that when the PPACA is fully implemented we will have an additional \$18 million per year of costs with the PPACA's regulations as they are today. *This will put our total health care costs at \$29.8 million, a 150% increase from what we spent last year.* That money will have to come from somewhere. The most likely place to start is new restaurant construction. *The \$18 million increase in our health care coverage costs would completely consume the \$4.5 million we spent on new restaurant construction last year, leaving nothing for growth and job creation.*

Another option to make up the gap between what we currently spend on health care and what we would spend under the PPACA would be to reduce our labor force. It is important to note that the PPACA explicitly makes labor more expensive. It is completely predictable that businesses such as ours will search for ways to take jobs out of our existing restaurants to reduce that expense. This is a basic law of economics that legislators would be well served to consider when crafting this kind of legislation. We would undoubtedly increase the number of part time employees; decrease the number of full time employees and attempt to automate positions (such as replacing cashier positions with ordering kiosks). These are not actions we want to take. They are actions the PPACA will all but compel us to take.

Finally, we could make up the gap between our current health care costs and the increased costs under the PPACA by reducing our capital spending on projects such as remodels and infrastructure. Eliminating these capital expenditures would be extremely difficult as they are essential to the continuing viability of our business. But under the PPACA, we would have little choice other than to reduce them, eliminating construction jobs and endangering the long term prospects of our business.

Our franchisees spent more on restaurant development last year as they built 41 new restaurants domestically. They spent more on health care coverage as they own 70% of our domestic restaurants and account for about 49,000 employees (about two and a half times as many employees as our Company). *As health care*

costs increase, our Company will have to further reduce new unit construction and job creation.

When I encourage franchisees to build new restaurants, I often hear about the uncertainties they face in deciding whether to make the investment. They speak of uncertainty with respect to future tax rates, energy, labor and commodity costs among other things. However, they prominently mention their certainty that under the PPACA their health care costs are going to significantly increase. In fact, they express concern that they will be unable to keep their current restaurants open, let alone open new ones.

Ours is obviously not the only industry facing the daunting prospect of massive health care cost increases under the PPACA. The impact of this concern on American businesses is impeding growth and job creation. Businesses that are unable to forecast a profit from a new venture because of increased expense, or uncertainty about expense, will not invest. As noted in a recent analysis by the Heritage Foundation's James Sherk:

Private-sector job creation initially recovered from the recession at a normal rate, leading to predictions last year of a "Recovery Summer." Since April 2010, however, net private-sector job creation has stalled. Within two months of the passage of Obamacare, the job market stopped improving. This suggests that businesses are not exaggerating when they tell pollsters that the new health care law is holding back hiring. The law significantly raises business costs and creates considerable uncertainty about the future.

* * *

The fact that improvements in the job market ground to a halt after Congress passed Obamacare does not prove that the health care law caused it—correlation cannot prove causation. However, the fact does lend strong weight to the voices of businesses who say that the law is preventing hiring.

James Sherk, *Recovery Stalled After Obamacare Passed* (Heritage Foundation 7/19/11) <http://www.heritage.org/Research/Reports/2011/07/Economic-Recovery-Stalled-After-Obamacare-Passed>.

In fact, some businesses that are marginally profitable may close when that profit margin disappears as a result of PPACA's costs. When private sector businesses fail or fail to invest, the economy slows and job creation either stagnates or vanishes. In our case, an \$18 million increase in health care costs will significantly reduce our new unit growth and the associated job creation.

2. Specific Cost Drivers

Underlying these overall costs are PPACA's myriad provisions aimed at employer-sponsored health plans. These provisions will significantly impact the way we determine eligibility for and enroll employees in our health plans, the way we set our premium contributions, the design of our benefit plans, and how we deliver coverage and insure our employees. Administration and coverage of our benefits will change substantially between now and 2014. We are already expending significant time, effort and resources just to figure out how to comply.

a. During 2012 and 2013 reporting requirements come into effect, including W2 reporting of gross healthcare costs and Summary of Benefits and Coverage (SBCs). The law will reduce the contributions employees can make to their Flexible Spending Accounts, and the law will impose an additional 0.9% Medicare tax for "high income" households (we do not expect that employers will have to collect or report this tax).

b. Our biggest challenges come in 2014:

i. Communication to Employees about the Health Insurance Exchanges in all states in which we currently operate, and numerous other nuances about available state assistance. Unfortunately, the states are not uniformly creating exchanges, and we, our franchisees and other employers will have to keep track of myriad state approaches so as to comply with disclosure and other requirements. We have no idea when or even if the states in which we operate will have exchanges, how they will operate, or how employers will have to interact with them.

There are additional compliance challenges in light of HHS' December 2011 bulletin on "essential health benefits" (EHB), which gave states considerable leeway to set their own benchmarks rather than defining one, nationally uniform package.

It's unclear whether HHS will give multi-state employers like CKE any flexibility or a uniform standard for purposes of complying with the law's prohibition of annual and lifetime dollar caps for EHBs.

ii. Automatic Enrollment of all eligible employees.

iii. The impact of the increased premium costs for all of the new eligible and enrolled employees. Other concerns in this regard are increasing costs of additional mandates, including “free” preventive care - which actually will result in higher premium costs, as well as costly new participant appeal and review rights that further burden employers.

c. *Selected Unknowns.* There are many aspects of the PPACA’s requirements where the government has yet to issue further guidance. Until the government does so, in a timely and reliable manner, we are unable to plan effectively.

i. Auto Enrollment – FAQs released on February 9, 2012 indicate that this provision will not take place until after 2014. It is imperative that employers are given adequate time to comply with any regulations that are ultimately issued. These uncertainties hamper the employer’s ability to plan strategically and effectively assess costs.

ii. Disclosures – there are roughly 16 new disclosures or notice requirements but the government has yet to issue full guidance on most items. The government is writing new guidelines with details down to the font size, style and length of the required documents. Despite reasoned and valid concerns from employers, regulators just recently refused to give employers additional time to prepare a new disclosure – essentially giving them at most six months to craft “summaries of benefits and coverage” that will likely confuse employees without giving them any new meaningful information. Regulators could have acknowledged, but chose to ignore, that employees eligible for employer-sponsored coverage already have access to meaningful and appropriate information, and that employers are already subject to significant disclosure obligations.

iii. Full Time vs. Part Time – The current known is that anyone over 30 hours will be considered Full Time and eligible for benefits. Recent announcements suggest that employers will have some rules of convenience for newly hired employees – giving employers with part-time or fluctuating workforces rules that are a bit more workable, but that still impose administrative burdens and potentially costly penalties on employers. Moreover, for full-time employees, employer

plans will have to meet still unknown minimum requirements for “value” and “affordability”—stymieing attempts to plan strategically. With further guidance we can better understand the full time equivalent rules and how we are to treat part-time employees. This is important so that we avoid penalties for not providing certain coverage, and so that we know who has to be automatically enrolled in one of our plans.

iv. Our part time employees currently have a Limited Medical Plan (sometimes referred to as a Mini-Med plan). The expectation is that in 2014 that option will become unavailable due to PPACA’s provisions that prohibit annual benefit limits. Currently we are able to provide this benefit plan as we have filed for and obtained a waiver with HHS to allow us to provide this benefit through January 1, 2014. The waiver only allows us to avoid PPACA’s annual dollar limit provisions – we must comply with all other applicable provisions.

V. Conclusion

The foregoing is intended to provide a summary of the issues the PPACA has created and that we are currently working through. We anticipate that the PPACA’s costs will be very substantial and its regulatory requirements burdensome. We strongly urge you to reconsider the menu labeling portion of the PPACA. We hope that at some point Members of Congress will set aside politics, and entrenched opinions, and carefully consider whether the benefit of PPACA as a whole is outweighed by the cost.

I want to conclude my testimony on a personal note. Like many people in this country, I come from a working class background. Through hard work and good fortune I was able to improve my position in life, and I am now able to provide opportunities to my children that I did not have. I fully recognize the important role government plays both in helping those who are unable to help themselves, and in providing a legal framework that enables the free market system to operate efficiently and with due regard for important goals like environmental quality and consumer health.

I want government to continue playing that role. But Congress must understand that laws have a real impact on real people who are working in real

businesses. We have to keep those businesses profitable and successful or we lose our jobs and endanger our future. That is not an easy task in the best of times. There has been one occasions in the last twenty years when CKE was close to bankruptcy. If our company were in that position now, it is entirely possible that the PPACA alone would force us over the edge.

I am personally at a stage in life where such an outcome would not substantially affect me or my family. But the vast majority of our employees are not in that position. There are millions of people like them in our country whose jobs depend on Congress being sensitive to the realities of small business in a way that is lacking in the PPACA.

The situation is so dire that some of our franchisees have lost confidence in our economy and want to sell their businesses. These small business owners are concerned about the economic viability of their businesses in the current regulatory climate. They are concerned that their government does not understand the difficulties they face and is unsympathetic to their plight. Rather than acting to assist them, the government seems to continually increase the number and complexity of the regulations governing their businesses thereby restricting their ability to grow and prosper.

Although we are working hard as a company with our elected representatives on both sides of the aisle to improve the business and regulatory climate, it is difficult to tell our franchisees that things are going to get better anytime soon. I understand that for many Members of Congress the PPACA was an important piece of legislation that advanced social policy goals they have pursued for many years. I encourage those Members to at least consider the compromise I have suggested with regard to the menu labeling portion of the bill. In the context of the overall bill, the burden imposed by the menu labeling section is small. But relief in that area would show that the Congress does recognize and place real value on the contributions of small business owners in our industry. That recognition would be far more meaningful than the actual relief which the compromise would provide, because it would create greater confidence within the business community that Congress cares about jobs and will in the future carefully balance its social agenda with our nation's economic needs.

Mr. STEARNS. I thank you.

Ms. Walz, you are recognized for 5 minutes.

TESTIMONY OF BARBARA WALZ

Ms. WALZ. Thank you. Chairman Stearns, Ranking Member DeGette, and members of the subcommittee, my name is Barbara Walz and I am the senior vice president for Policy and Environmental at Tri-State Generation and Transmission Association. I appreciate the opportunity to testify before you here today on Tri-State's views of the regulatory climate.

Tri-State is a not-for-profit consumer-owned electric cooperative based in Westminster, Colorado. Our mission is to provide reliable, cost-based wholesale electricity to our 44 not-for-profit member systems that serve 1.5 million rural consumers in Wyoming, Nebraska, New Mexico, and Colorado. Tri-State generates or purchases power from hydropower, solar, wind, coal, and natural gas. In 2010, we integrated 50 megawatts of wind and 30 megawatts of solar into our generation mix. At that time, the solar facility we built was the largest photovoltaic system in the world. The bulk of our power needs to come from coal-based power plants in Wyoming, Colorado, Arizona, and New Mexico. These plants have become an important part of the communities in which they reside. For example, the Craig Power Plant in Western Colorado and the coalmines from which the company gets its coal employs 750 employees and provides \$73 million in wages and benefits.

Tri-State's generating facilities all have state-of-the-art emission controls and yet, even with these advanced emission controls, we are struggling with regulatory uncertainty and regulatory stringency from EPA regulations. Regional Haze, the Utility MACT rule, and Coal Ash are three of the examples of new regulations we are facing. Under the Regional Haze Program, States are provided the authority to make decisions about how much visibility improvement is reasonable and the controls needed to improve visibility.

In Colorado, the Air Quality Control Commission unanimously adopted the State Implementation Plan, or SIP. This SIP is unique. It has unanimous support from the State, from environmental groups, and from industry. This SIP has subsequently been supported by the Democratic governor, the Republican speaker of the State House, as well as Senators Mark Udall, Bennet, Ranking Member DeGette, Congressman Gardner, and the rest of the Colorado House Delegation. Yet even with this bipartisan and cross-spectrum support, there is significant uncertainty as to whether EPA will approve Colorado's SIP. EPA has not been approving surrounding States' SIPs and instead, they have issued FIPs, or Federal Implementation Plans, that are more stringent. So we are uncertain, as of today, what our Regional Haze costs will be.

Another issue of regulatory uncertainty that we face is EPA's pending decision on coal ash. Tri-State manages coal ash in a dry form in accordance with stringent State laws. Under the Clinton administration, EPA made a regulatory determination that Coal Ash is not a hazardous waste, and yet EPA has recently recanted this determination and has proposed designating coal ash as hazardous. The comment period for this rulemaking closed in 2010 but EPA said they won't make a final decision until 2013. During this

reversal of decision by EPA, 28 States, including Colorado, have sent letters to EPA stating that programs that they have established under State law are sufficient to protect public health and the environment.

A second concern that Tri-State has is the manner in which EPA is stringently interpreting its rulemakings. The Utility MACT is an example of this stringent approach. Under this rule, EPA was supposed to develop a standard based on the performance of existing units, but what they did was cherry-pick the lowest emissions of pollutants from a variety of sources from across the country and the standard does not represent the performance of a single unit in the United States. Some have referred to this facility as "Franken-MACT." For new coal units, the emission limits in the MACT Rule are so stringent that technology vendors have told EPA that they cannot design equipment to meet these stringent standards. This rule essentially prohibits building new coal plants in the United States and coal is our lowest-cost source of energy that Tri-State provides.

As a not-for-profit cooperative, any costs associated with complying with EPA regulations is passed onto the end users of electricity in the form of higher electricity bills. Tri-State provides electricity to rural farms, ranches, and businesses and our service territory includes some of the poorest counties in the country. These folks cannot afford these ever-increasing costs.

Tri-State urges the committee to exercise continued oversight over EPA's regulatory activities to help us meet our mission of providing affordable and reliable electricity.

I would like to thank Ranking Member DeGette and Congressman Gardner for their recent support on both Regional Haze and Coal Ash issues. Thank you.

[The prepared statement of Ms. Walz follows:]

Ms. Barbara Walz
Senior Vice President for Policy and Environmental
Tri-State Generation and Transmission, Inc. Westminster, Colorado
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
“Regulatory Reform Series #8 – Private-Sector Views of the Regulatory Climate One Year
After Executive Order 13563.”
16 February 2012

Thank you Mr. Chairman. Chairman Stearns and Ranking Member DeGette, my name is Barbara Walz and I am Tri-State Generation and Transmission Association’s Senior Vice President for Policy and Environmental. I appreciate having the opportunity to testify before you today on Tri-State’s views of the regulatory climate in the U.S. and its effect on our ability to provide affordable and reliable electricity to our consumers.

Tri-State is a not-for-profit member-owned wholesale generation and transmission electric cooperative based in Colorado. Our mission is to maintain high environmental standards, while providing reliable, cost-based wholesale electricity to our 44 not-for-profit member systems (electric cooperatives and public power districts) that serve 1.5 million predominantly rural consumers over 200,000 square miles of territory in Colorado, Nebraska, New Mexico and Wyoming. To meet our membership’s electricity needs, Tri-State generates or purchases power produced by coal, and natural gas, as well as from renewables -- including hydropower, solar and wind.

Tri-State supports and is committed to good environmental stewardship, but has observed the U.S. Environmental Protection Agency (EPA) propose and finalize an unprecedented number of regulations and significant guidance documents that will greatly affect Tri-State’s ability to provide affordable electricity to our member systems.. As a not-for-profit cooperative, the cost to comply with these rules and other requirements are rolled directly into our consumers’ rates.

As a cooperative, Tri-State does not make any profit from the implementation of these rules. The costs we absorb from these regulations are ultimately passed onto our member systems' consumers, who are the families and individuals at the end of the electric lines.

Regulatory Uncertainty

EPA's regulatory actions are substantially undermining the ability of States to make effective decisions to adopt and implement environmental programs in a manner that addresses the needs and interests of individual states. Many of our states' Clean Air, Clean Water and Solid and Hazardous Waste Programs are adopted from EPA and implemented by the individual states. EPA's actions of late have made it difficult for states, and the business and industry that operate in those states, to know that the programs adopted by the state will survive review by this EPA.

Regional Haze is a program under which EPA is taking actions that exceed or unnecessarily stretch its legal authority and undermine the ability of states and their constituent business and industry to manage and implement regulatory programs. Under this program, states are required to conduct an analysis of the major emitting facilities in their states considering several factors. States are expressly provided the authority under the EPA rule to make decisions about how much visibility improvement is reasonable at this time and what, if any, additional controls would improve visibility. However, in many states across the country, EPA is disapproving state-adopted plans. EPA is issuing plans that impose significantly more onerous emission controls at substantially greater costs. Tri-State believes that more expensive controls will likely provide very little, if any, additional visibility improvement. The state of Colorado's Air Quality Control Commission unanimously adopted a regional haze state implementation plan

(SIP) in December 2010 that was supported by all of the parties to the rulemaking hearing. This plan was subsequently supported in letters by the Colorado Congressional delegation -- including Representatives Gardner and DeGette --, the Democratic Governor of Colorado as well as the Republican Speaker of the Colorado House. The EPA has signed a consent decree with the Wild Earth Guardians requiring it to make a decision regarding Colorado's SIP by this March. In surrounding western states EPA has disapproved or proposed to disapprove the plans of North Dakota, Wyoming, New Mexico, Oklahoma, Nevada and Arizona. The decisions of EPA come with significant economic impacts to business and industry as well as the states.

The coal ash rule is another good example of the uncertainty that EPA is creating for our industry. Over 10 years ago, EPA conducted a study and made a regulatory determination, as was required by law, that coal ash was not a hazardous waste. Now EPA has changed its mind and is not sure. EPA has made two proposals to regulate coal ash; one as hazardous waste and one as a solid waste. This decision will have significant cost impacts to our industry. EPA closed the public comment period in 2010, but may not finalize the rulemaking proposal until 2013.

Tri-State believes that classifying coal ash as a hazardous waste is unnecessary because the testing data do not support the need for this type of classification. If EPA proceeds with this designation, it is estimated that it will require about 10 times more hazardous waste landfill space than what is currently permitted. The permitting of these facilities takes years to accomplish and the ongoing operations and maintenance are very costly. Under the rulemaking for coal ash, 28 states -- including Colorado's Department of Public Health and Environment and New Mexico's Public Regulation Commission -- sent letters to EPA stating that the programs they have utilized

to manage coal ash as a solid waste, are sufficient to protect the public health and environment and meet the requirements of the law.

As the Regional Haze and Coal Ash rules illustrate, the regulatory actions of EPA are creating great uncertainty in our industry. In many cases we spend a significant amount of resources to analyze and calculate how to proceed and determine the best course of action is legal challenge.

The Interior West contains vast quantities of high quality, low emitting coal that can be used responsibly to generate cost effective energy for a growing region of the country. Tri-State, in conjunction with Sunflower Electric, has a permit to build a new coal-fired unit at an existing coal-fired power station in Kansas, but the new source emissions limits finalized by EPA in the Utility MACT are likely to make it impossible to complete. It is anticipated that this facility would cost over a billion dollars to construct. Prospective lenders will not provide financing without some guarantee that the facility will be able to comply with the new requirements. Prospective contractors or vendors have not been able to provide any type of guarantee that the equipment they can build will meet the new requirements.

Regulatory Stringency

The Utility MACT rule has the dubious distinction of being an example of a rulemaking that creates uncertainty for the electric utility industry, while at the same time illustrating the how EPA stringently interprets some of its rulemakings. EPA is making the most stringent regulatory interpretations that seem possible, using questionable arguments that will likely be subjected to legal challenge and create considerable ongoing uncertainty. In doing so, EPA has created the most expensive regulatory program in history with industry costs totaling in the

billions annually. As I previously noted, because Tri-State is a not-for-profit electric cooperative, these costs will be passed on to our consumers directly in their monthly utility bills and indirectly in the goods and services that they purchase.

Examples of these costs can be seen in the final rule for the electric Utility MACT rule or, as some call it, the Mercury and Air Toxics Standards Rule. In this rule, EPA cherry picked the lowest emissions of pollutants from a variety of sources across the country to conjure up a description of facility emissions that do not represent any single facility in operation. This hypothetical facility has been deemed the “Franken MACT.”

The Utility MACT rule will require the application of emission controls at hundreds of facilities across the country. These controls can cost tens to hundreds of millions of dollars and can take years to install. EPA simply believes that when the electric utility industry floods the market with a demand for this type of service, contractors will staff up and meet the demand. However, these controls are not mass produced or “off-the-shelf” technology. Each control unit is built specifically for the facility at which it will be used. The Utility MACT rule will require existing coal plants to have emission controls installed and operating in three years. This time frame may not seem difficult when you consider a single facility, but when considering the entire electric utility industry – there will be hundreds of facilities across the country that will simultaneously require the installation of emission controls. It is unrealistic to think industry can design, permit, finance, construct, test and deploy this technology in this condensed timeframe. EPA has stated that 69 facilities can comply with all the requirements of the Utility MACT. Unfortunately, that leaves over a thousand facilities needing to install these very specialized controls in this short period of time. The EPA’s recent requirement for determining compliance with the new national air quality standard for sulfur dioxide is another example of a stringent

regulatory interpretation. This regulation does not allow us to show that we comply by using actual monitored data. Instead, EPA requires us to use modeled (or estimated) data based on a set of very stringent assumptions that may not accurately depict air quality conditions “on the ground” at a given location.

The emission standards that EPA is establishing for new coal fired sources is another example of a stringent regulatory interpretation. The emission standards EPA is seeking to establish are simply not achievable in the real world on a continuous basis as EPA requires. Use of the most advanced facility designs and emission control technologies that are currently commercially available will not position new units for continuous compliance. EPA has targeted setting the emission limits at the lowest levels that have ever been seen and, in some cases, lower than current instruments are able to measure. These limits may be achieved under the best operating conditions over a short period of time by facilities that do not epitomize the spectrum of the industrial operations in place today. In the Utility MACT, EPA used a relatively small facility in Hawaii that burns waste tires and coal from Indonesia to set the emission limits for new sources in the United States. There are significant questions about EPA’s calculations and how much this facility is indicative of the U.S. coal-based generation. EPA estimate the benefits of the Utility MACT rule is \$6 million annually. Unfortunately, the cost of compliance is estimated to be \$9 billion annually.

In addition, it is Tri-State’s understanding that EPA is currently considering proposing a New Source Performance Standards (NSPS), in the near future, for greenhouse gases at an emission rate about one-half that of a coal-fired power plant. It is difficult for the electric sector to understand how EPA can attempt to establish such a requirement when EPA has stated that

this technology is not commercially available. Tri-State believes that this will shut down coal operations in the U.S.

EPA is operating under unrealistic expectations about the capability of our industry to design, finance, permit, construct, test and deploy new technology -- in very short timeframes--- in order to comply with the rules that it is proposing and finalizing. EPA seems to have adopted an *"if you mandate it they (the vendors) will build it"* perspective to these rules and that the industry will be able to do what EPA wants in a very limited time frame.

Conclusion

Tri-State provides electricity to many rural areas of Colorado, Nebraska, New Mexico and Wyoming, some of which are in the most economically depressed counties of the country. The economic impact that EPA creates with the programs they adopt and the manner in which they manage those programs have real adverse economic impacts on the public. The electric utility industry provides well-paying and meaningful jobs in communities across the country. We also have a significant indirect beneficial economic impact on the communities in which we operate and do business. Tri-State is not opposed to necessary regulatory requirements to protect public health, welfare and the environment that can be implemented in fair and reasonable timeframes, but we have a valid concern with the approach that EPA has taken in the recent past to implement the laws Congress has enacted. Tri-State urges the committee to exercise continued oversight over the EPA's regulatory process in order to help us to continue to provide affordable and reliable electricity to our member systems and their member-owners.

Thank you for inviting me to testify here today. I'd be happy to take any questions.

Mr. STEARNS. I thank the gentlelady.
 Mr. Shoop, for 5 minutes we recognize you.

TESTIMONY OF KIMBER SHOOP

Mr. SHOOP. My name is Kimber Shoop. I am senior counsel at Oklahoma Gas and Electric Company. We appreciate the opportunity to come before you today to provide our view of the regulatory climate in the aftermath of President Obama's Executive Order 13563.

OG&E serves approximately 790,000 customers in 268 communities in Oklahoma and Western Arkansas. While we are the largest electric utility in Oklahoma, OG&E is considered a medium- to small-sized investor-owned utility and lacks the resources possessed by many of the much larger utilities in the industry. Nonetheless, OG&E's commitment to customers and its innovative thinking has been duly recognized by significant industry observers. In 2011, OG&E was named best in class for customer satisfaction by JD Power and Associates, and I am also very proud to report that OG&E was named 2011 utility of the year in North America by Electric Light and Power Magazine.

OG&E has set a goal of reaching the year 2020 without adding any new fossil fuel generation by focusing on energy efficiency, demand response, smart grid, renewable wind power, and building new transmission. The recent suite of EPA rules under the Clean Air Act constitutes a serious challenge to OG&E's efforts because they effectively force OG&E to make immediate or very near-term high-stakes choices regarding its generation fleet.

With regard to meeting SO₂ emission limits alone, OG&E will be forced to choose whether to install scrubber technology on its coal plants, which could cost over a billion dollars, or discontinue coal generation from units that still have much life in them and move closer to a primarily all natural gas fleet. Each of these options alone is extremely expensive for OG&E and ultimately our customers. We determined that either option would lead to the largest rate increase in our company's history.

Other EPA rules are further complicating the decision by creating new emission limits for NO_x, acid gases, particulate matter, and mercury. The President's executive order should have a welcome, therapeutic impact in improving our ability to meet in a more reasonable, cost-effective manner legitimate environmental objectives that Oklahomans and Americans in general generally desire. But OG&E does not see EPA successfully balancing the executive order's laudable objectives of protecting public health and safety and environmental quality on the one hand with promotion of economic growth, innovation, competitiveness and job creation.

OG&E does not see EPA sufficiently improving its processes by using the best available science or by truly being interested in allowing for meaningful public participation in an open exchange of ideas as called for in the executive order. OG&E most certainly does not see EPA's regulatory approach as promoting predictability and reducing uncertainty, and OG&E does not find that EPA has taken into sufficient consideration comparative benefits and costs of its regulations.

For example, OG&E worked with various State interests in the DEQ and Oklahoma to craft a State compliance plan for the EPA's Regional Haze Rule. This flexible Oklahoma solution provided optionality to OG&E, minimized the impact on customers in the State economy, and retained increased natural gas use as an alternative. Most importantly, this solution met the visibility improvement goals of the Regional Haze Rule. Unfortunately, the EPA rejected this reasonable approach and stuck to its rigid position with regards to scrubbers or conversion to gas within 5 years.

OG&E does not view the EPA's rejection of Oklahoma's regional haze SIP as being consistent with the executive order's stated goal of achieving environmental results on a more cost-effective or creative basis. The overlay of regional haze mandates with potentially different technology demands and unsynchronized compliance schedules for such items as U-MACT, CSAPR, and the soon-to-be-seen greenhouse gas regulations magnify our unpredictability problem significantly.

The strict and unpredictable timetables could also affect the reliability of service for OG&E and the other members of our regional grid. A mandate to invest over a billion dollars would make it difficult for OG&E to continue focusing on things like wind energy, energy efficiency, demand-side management, and will make it more difficult to invest in the base-level commitments for maintaining and operating our business. If we can achieve the same desired environmental results at a lower cost, which we think is the President's laudable intention underlying the executive order, we believe we have an obligation to do so.

For us to make intelligent capital investment decisions, we need to treat all of the new EPA rules holistically to create a coordinated, rational plan for selecting compliance strategies from the range of options in a way that makes sense to our State economies, our ratepayers, and the environment. We would hope that the result of the hearing today would be for the subcommittee to work together on a bipartisan basis to see the objectives of President Obama's executive order become elemental drivers of all that EPA does.

Thank you.

[The prepared statement of Mr. Shoop follows:]

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Summary of Key Points from Statement of Kimber L. Shoop
 Senior Counsel
 Oklahoma Gas and Electric Company

Hearing before the House Energy & Commerce Subcommittee on Oversight and Investigations
 February 16, 2012

OG&E very much supports and applauds the goals of President's Executive Order 13563. However, OG&E believes that the EPA is not meeting the goals set out by the President. EPA should increase its focus on promotion of economic growth, innovation, competitiveness, job creation, use of best available science, allowing meaningful public participation, enhanced capital investment predictability, and comparative cost-benefit analysis in its rulemaking process. This would materially improve the effectiveness, credibility and perceived legitimacy of the agency's efforts to protect the public health, safety and environmental quality.

Executive Order 13563 comes at a critical time in our industry. Utilities are under historically unprecedented pressure to meet competing demands to invest capital to accomplish an ever-widening range of public policy objectives, including inter alia, greater energy efficiency and demand side management programs, increased use of renewables, increased transmission and cyber security. All these entail billions of dollars in new capital investment and are in addition to the cost of the range of EPA's new Clean Air regulations which individually and collectively themselves represent billion dollar investments. All these investments materially impact electric rates, customers, and the economic climate of a utility's service area. Mid-sized and small utilities like OG&E do not have the same capital resources that much larger utilities have in order to accommodate all these investment demands and the attendant collateral requirements of personnel and other resources that go with those investments. Today's financial market environment makes financing these investments difficult and expensive and lends another level of uncertainty and risk to our ability to make capital investments.

We do not see the EPA incorporating the Executive Order sufficiently in its development of its new Clean Air Act regulations as they would impact Oklahoma. In particular, we find EPA's approach to such regulations as adding to the significant uncertainty surrounding utility capital investment. We believe that there is significant room for improvement in the regulatory climate in terms of EPA's cost-benefit analysis, use of best available science, establishment of reasonable and cost-effective compliance timelines, consideration of electric service reliability and other critical electric market realities. We would welcome a more meaningful opportunity for dialogue with EPA on these issues.

We urge the EPA to do more to reflect the aspirations of Executive Order 13563 in its rule makings affecting utilities and to permit greater flexibility for utilities in meeting established environmental objectives in a manner that makes greater sense for customers, jobs and the economic welfare of the markets utilities serve.

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Statement of Kimber L. Shoop
Senior Counsel
Oklahoma Gas and Electric Company

Hearing Before the House Energy and Commerce Subcommittee on Oversight and
Investigations

February 16, 2012

Re: Private Sector Views of the Regulatory Climate One Year After
Executive Order 13563

My name is Kimber L. Shoop. I am the Senior Counsel for Oklahoma Gas and Electric Company, an electric utility headquartered in Oklahoma City. Commonly called OG&E, we serve approximately 790,000 customers in 268 communities in Oklahoma and western Arkansas. Our fossil-fuel generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, and we currently have wind power capacity of 780 megawatts or roughly 10% of our total generating capacity.

My company and I appreciate the opportunity to come before you today to provide an overview of how we assess the regulatory climate relating to our efforts to meet newly promulgated and pending EPA rules, including the EPA action to implement the Regional Haze rule in Oklahoma, the Cross State Air Pollution Rule and the Hazardous Air Pollution rule or Utility MACT. My statement will try to provide you with some insight into the challenges OG&E faces in light of these rules. However, before I begin talking about the EPA rules and their challenges to OG&E, I believe it is appropriate to provide some background about OG&E

I. Who is OG&E?

As you know, all utilities are not alike. They vary in many important ways: in terms of size, weather demands, financial resources, generation mix, renewable

resources, and of course their state regulatory and political environment in which they operate. While the largest electric utility in Oklahoma, OG&E is considered a medium to small sized investor owned utility and lacks the resources possessed by many of the much larger utilities that have appeared before this Subcommittee. It may be helpful to the Subcommittee to first have a sense of OG&E's individual persona as a utility and our particular experience and perspective in providing low cost, reliable and environmentally responsible electric service to our customers.

As a state-regulated utility, OG&E bears the responsibility of its "obligation to serve" all electricity customers in its service area and we take this obligation seriously. This obligation to serve carries with it the requirement to provide reliable electric power at the lowest reasonable cost to our customers. But beyond that, OG&E strongly believes that it is incumbent on us as a good corporate citizen to produce reliable and low cost power for our customers in an environmentally responsible manner.

A perfect example of our commitment to customers is our "2020 Goal." In 2007, OG&E's CEO, Pete Delaney, committed us to a goal of reaching the year 2020 without adding any new fossil-fuel generation. This was a significant challenge because OG&E was and is experiencing steady growth in customer demand. OG&E's 2020 Goal represented a radical departure from the electric industry business model that served customers well since at least the 1930s. Simply stated, building power plants to serve current and anticipated load growth made certain sense in meeting demands for electricity - especially when fuel was cheaper and there were more plentiful construction resources and relatively inexpensive solutions to meet environmental requirements. Today, utilities cannot simply build power plants to meet growing demand. OG&E's leadership recognized in 2007 that continuation of the old approach to simply build additional generation capacity is not in the best interest of our customers, our shareowners and the local economies that we serve.

First and foremost, the 2020 Goal is premised on continued commitment to investment in the day to day business of providing safe and reliable electric service, improving our operational efficiencies and engaging our customers. The 2020 Goal focuses on: increased energy efficiency programs; increased demand response through new and expanded programs that are enabled by new smart meter technology; adding

renewable wind energy; and building new transmission to bolster reliability and to support wind power. Over time, we've recognized that achieving the goal can be enhanced by a number of other initiatives, including consideration of the retirement or replacement of existing generation, not renewing our wholesale contracts as appropriate, and smart grid deployment.

OG&E's commitment to customers and its innovative thinking is paying off and has been duly recognized by significant industry observers. In 2011, OG&E was named best in class by J.D. Power and Associates for customer satisfaction. Also, I am very proud to report that OG&E was named by Electric Light and Power magazine as the 2011 Utility of the Year in North America.

A. OG&E and Wind Power:

I can report firsthand to you that the interest in environmentally friendly energy and energy conservation-oriented consumer behavior certainly exists in Oklahoma. In the western part of our state, wind farms seem to be popping up everywhere. Oklahoma has gone from virtually no wind power just a few years ago to currently being ranked 8th nationally in existing installed wind power generation capacity. By the end of 2011, OG&E had increased its wind generation to 780 MW, which represents approximately 10% of our generation portfolio. This wind energy replaces and complements fossil fuel generation and will result in more than \$1 billion in estimated customer savings over the life of those facilities. OG&E has also constructed new transmission lines between western and central Oklahoma to allow renewable power being developed in sparsely populated western Oklahoma to reach our customers and others in more heavily populated parts of our service areas in Oklahoma and Arkansas. And I might emphasize that all of these achievements in developing renewable generation are occurring without any state or federal mandates.

B. OG&E and Demand Side Management and Efficiency:

In addition to wind power, we are renewing our interest and focus on demand side management ("DSM") programs aimed at reducing energy use. OG&E has been focusing on energy efficiency and demand response to achieve reductions in both demand

and our customers' overall energy costs. OG&E has undertaken efforts to expand its traditional demand response programs and has received approval to expand its energy efficiency programs in both the Oklahoma and Arkansas jurisdictions. With additional customer education, better technology such as smart meters, and other programs, we believe that there are growing opportunities for even greater energy savings.

In 2010, OG&E began implementing its Smart Grid program, and today is viewed as a national leader in deployment of this technology. Smart Grid is critical to the success of the DSM effort and a reduction in future customer costs associated with the avoidance of additional generation capacity. In 2007, OG&E began evaluating intelligent digital meters and advanced metering infrastructure. After a successful demonstration of Smart Grid technology in northwest Oklahoma City during 2008, OG&E decided to expand Smart Grid by deploying the technology in the Norman, Oklahoma service area. The results of that pilot program convinced us of the merits of expanding our Smart Grid project system-wide. On July 1, 2010, the Oklahoma Corporation Commission issued an order approving the Company's plan to move forward with deployment of Smart Grid in Oklahoma.¹ This past spring, the Arkansas Public Service Commission authorized OG&E to implement Smart Grid in Arkansas. As of the end of January 2012, I am pleased to report that OG&E has over 545,000 smart meters installed or just over 68% of the system-wide deployment of smart meters. With the installation of the smart meter technology, the Company is now able to propose additional tariff options, along with an enhanced suite of on-line customer tools, to further empower customers to manage their electric bills. The early results from our Smart Grid project have been very encouraging. Based on two consumer behavior studies, residential customers are now shifting as much as 1.9 kW of demand (per participant) from the peak near 5:00 PM to off system peak during the summer. These same customers saved around \$200 on average for the year.

OG&E's goal is to reduce its capacity needs by approximately 500 MW by 2020 through its DSM and energy efficiency programs.

¹ OG&E's system-wide Smart Grid program was financed on a cost share basis with OG&E and its customers paying for 64.5% and the balance defrayed through a \$130 million federal grant from DOE, which was made subject to the finalization of all administrative and contractual requirements, including completion of deployment by December, 2012. OG&E was the only investor-owned electric utility in Oklahoma and Arkansas that received a DOE grant.

C. OG&E and Fuel:

OG&E's electricity rates are well below the national average. OG&E's low electricity rates are largely attributable to the favorable cost implications of having a diverse generation portfolio. As stated above, OG&E's current generation capacity mix is approximately 52% natural gas-fired, 38% coal-fired, 10% wind power. This diverse fuel mix allows OG&E to maintain electricity rates well below the national average because it shields customers from being too vulnerable to the price of any one particular fuel. For example, natural gas prices have recently dropped to very low levels. However, there was a time in the recent past when natural gas prices were extremely high and subject to high volatility. OG&E's generation mix helped our customers through that volatile period and ensured that rates remained stable.

Coal is both abundant domestically and historically cheaper than natural gas. Over the past five years, OG&E's average delivered price of coal has been \$1.54 (\$/MMBtu), while the average delivered price of natural gas has been \$5.51 (\$/MMBtu). In the past few months, OG&E's delivered price of natural gas has dropped, reaching approximately \$3.82 (\$/MMBtu) in January 2012, and is still above the historic price of coal. Having a diverse fuel mix has allowed customers to benefit from this differential in fuel costs. While approximately 38 percent of our generation capacity is from coal-fired generating units, those coal units produce 60 percent of the energy, with natural gas largely used for the balance of baseload generation and for peaking demand. We use low sulfur Powder River Basin coal which has kept both our emissions and our electricity rates to our customers low, which in turn has contributed very significantly to Oklahoma's economic viability and competitiveness. As a major gas producing state, Oklahoma's economy, and I might add, OG&E's sister company, Enogex, benefit from higher prices for natural gas. However, if natural gas prices rise, the price advantage of coal for use in generating electricity grows. At the same time, continued use of coal brings with it significant challenges with regard to compliance with pending EPA rules.

II. Specific Challenges from Pending EPA Rules

As discussed above, OG&E has an obligation to serve and provides reliable electric power at the lowest reasonable cost to our customers in an environmentally responsible manner. OG&E's efforts to increase wind farm development and an increased emphasis on demand side management and energy efficiency programs are examples of OG&E's commitment to reducing reliance on fossil fuel generation and reducing costs to customers. However, the recent suite of EPA rules constitutes a challenge to OG&E's efforts because they effectively force OG&E to make immediate or, at the least, very near term choices regarding its generation fleet.

With regard to meeting SO₂ emission limits, OG&E will be forced to choose whether to (i) install costly scrubber technology on its coal plants (all of which are still only halfway through their useful lives) or (ii) discontinue coal generation from units that still have much life in them and move closer to a primarily all natural gas fleet. I emphasize that this is not a set of choices in which one alternative is costly and the other is not. Each of these options alone is extremely expensive for OG&E and ultimately our customers. On top of these requirements for SO₂, other EPA rules are further complicating the decision by creating new emission limits for NO_x, acid gases, particulate matter, and mercury.

To put the cost quandary into perspective, OG&E hired leading industry consultants to provide cost estimates of installing scrubbers on four of OG&E's five coal units. The estimated capital cost is over \$1 billion with an increase to annual O&M of between \$70 and 150 million. This would translate into the largest rate increase in the history of the company. In July 2011, OG&E looked at the customer impact of a scenario where dry scrubbers, low NO_x burners and Activated Carbon Injection are all installed on OG&E's five coal units. The analysis showed that residential customers could see a 23 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$123 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$50,000 (which represents a 26 percent increase from the current average monthly bill).

If OG&E replaced its five coal units with natural gas generation, OG&E would face the capital costs of retiring, converting or replacing the coal units' baseload capacity and the related fuel costs stemming from more natural gas being purchased and burned. In July 2011, OG&E also looked at the customer impact of a scenario where OG&E replaced its five coal units with natural gas generation. Using our January 2011 forecast of natural gas prices, OG&E estimated that such a switch to natural gas would be even more expensive for customers than installation of five scrubbers and would lead to greater vulnerability to the price volatility of natural gas. The analysis showed that residential customers could see a 37 percent increase on the average customer's monthly bill (*i.e.*, an increase from \$100 to \$137 in the monthly bill). Also, the average monthly bill for a large industrial customer could increase by as much as \$100,000 per month (which represents a 56 percent increase from the average monthly bill).

As you can readily see, either of these options involves serious rate shock for customers and would commence an adverse ripple effect on our Oklahoma economy. In our view, it is incumbent on us to work with the Oklahoma Department of Environmental Quality ("DEQ") and the EPA to develop a more common sense solution that avoids such rate shock for customers, while achieving the objectives of the major EPA rules.

A. Regional Haze Rule

On July 6, 2005, the EPA issued its final Regional Haze Rule. This Rule requires that states submit state implementation plans ("SIPs") to address regional haze visibility impairment in 156 federally-protected parks and wilderness areas. Among other things, the EPA regulations require states over approximately a 50 year period to eliminate man-made impacts on visibility in federally protected parks and wilderness areas around the United States.

The Regional Haze Rule includes a requirement that certain large stationary sources install Best Available Retrofit Technology ("BART") to control regulated emissions such as SO₂ and NO_x. Sources that may be required to install BART are those sources: (i) that were put in place between August 7, 1962 and August 7, 1977; (ii) that have the potential to emit 250 tons or more of a visibility-impairing air pollutant; and (iii)

whose operations fall within one or more of twenty-six listed categories, including electric power generation. OG&E has several generating units that are “BART-eligible” under the regional haze regulations, including four coal-fired units and three gas-fired units.

In January 2010, OG&E and the DEQ entered into a regional haze agreement to address the requirement of BART at OG&E’s Sooners, Muskogee and Seminole Generating Stations and finalized the Oklahoma SIP. The state’s solution was to require OG&E to continue to burn low sulfur coal because the installation of scrubbers was not cost effective for controlling SO₂ emissions. In the Oklahoma SIP, the DEQ recognized that the cost for dry scrubbers is too high and the benefit too low. If EPA disagreed with that BART determination, the State SIP’s solution would give OG&E the option to either (i) achieve SO₂ emission reductions consistent with the installation of 4 scrubbers by 2018; or (ii) achieve SO₂ emission reductions consistent with 2 scrubbers and 2 complete conversions to natural gas by 2026. This flexible Oklahoma solution provided optionality to OG&E, minimized the impact on customers and the state economy, and retained increased natural gas use as an alternative. Most importantly, this solution met the visibility improvement goals of the Regional Haze rule.

In December 2011, EPA disapproved the portions of Oklahoma’s regional haze SIP that address BART for SO₂ and issued a Federal Implementation Plan (“FIP”) that directs OG&E to meet SO₂ emission limits within 5 years by either installing scrubbers on four coal units or switching that generation capacity to natural gas.

The portion of the Oklahoma SIP approved by the EPA involves installation of low NO_x burners on four OG&E coal-fired units and three OG&E gas-fired units to control the NO_x emissions. OG&E is in the process of moving forward with such installations, but we do so recognizing a considerable element of uncertainty since it remains to be seen whether the permitting process for such retrofits or other coming rules could implicate even greater controls. Also, the timing for the installation of the low NO_x burners is five years under Regional Haze, while other rules may require an acceleration on the timeline.

OG&E is studying the feasibility and cost-effectiveness of other potential ways to achieve the mandated SO₂ emission reductions under the Regional Haze FIP, including

installation of Dry Sorbent Injection ("DSI") on its coal units. Since this is relatively new technology and is not currently being used on a widespread basis on larger units, a substantial amount of testing will be required. Based on current information, OG&E believes that DSI may be significantly less expensive to install and operate than scrubbers. OG&E continues to evaluate this DSI technology, but significant operational questions remain unanswered. It could be that DSI leads to additional controls that eliminate any cost savings, but it is not clear at this point. OG&E needs additional time to evaluate whether a lower cost alternative such as DSI would be effective, but the compliance deadlines from EPA and the lead-time needed to procure, permit and construct scrubbers significantly hampers our ability to consider alternative solutions that may prove to be reasonable.

OG&E is preparing to appeal this final decision on the SO₂ emission limits by EPA, but in the meantime, OG&E must face the prospect of complying with this very expensive rule.

B. Maximum Achievable Control Technology/HAPS (MACT)

On December 16, 2011, the EPA signed the Maximum Achievable Control Technology (MACT) regulations governing emissions of certain hazardous air pollutants from electric generating units. The final rule includes numerical standards for particulate matter (as a surrogate for toxic metals), hydrogen chloride and mercury emissions from coal-fired boilers. Compliance is required within three years after the effective date of the rule with a possibility of a one year extension. The effective date of the rule has not been established, but it is expected to be during the second quarter of 2012. The final rule could be appealed after it is published. OG&E cannot predict the outcome of any such appeals and is evaluating the regulations and what emission controls would be necessary to meet the standards and the associated costs, which could be significant.

OG&E believes that both scrubbers and DSI could be viable technologies for meeting the hydrogen chloride limits contained in the rule. However, as stated above, additional testing is required for DSI and the three-year clock (with possible one additional year extension of the compliance deadline) essentially limits OG&E's ability

to understand the DSI technology before making a decision on whether or not to commit to that technology for compliance. Also, the cost of DSI varies widely depending on whether DSI leads to other emission level increases that would require additional and expensive control technology. In addition to DSI to meet the MACT requirements, OG&E believes that Activated Carbon Injection ("ACI") is necessary to meet the mercury limits contained in the rule. ACI would cost approximately \$20 million to install on our five coal-fired units, plus significant annual O&M costs. However, OG&E would not want to invest those millions on its coal units if other regulations such as those identified elsewhere in my testimony are going to push the Company toward retirement or conversion of those units in the near future.

C. Cross State Air Pollution Rule

On July 7, 2011, the EPA finalized its Cross-State Air Pollution Rule to replace the former Clean Air Interstate Rule that was remanded by a Federal court as a result of legal challenges. The final rule requires 27 states to reduce power plant emissions that contribute to ozone and particulate matter pollution in other states. On December 27, 2011, the EPA published a supplemental rule which makes six additional states, including Oklahoma, subject to the Cross-State Air Pollution Rule for NOx emissions during the ozone-season from May 1 through September 30. Under the rule, OG&E would be required to reduce ozone-season NOx emissions from its electrical generating units within the state beginning in 2012. The Cross-State Air Pollution Rule is currently being challenged in court by numerous states (including Oklahoma) and power generators. On December 30, 2011, the U.S. Court of Appeals issued a stay of the rule and requested proposals for accelerated briefing to allow the merits of the case to be heard by April 2012. Just recently, EPA has stated that the supplemental rule applicable to Oklahoma is included in the stay of the main CSAPR rule.

OG&E is looking at a possible appeal of the supplemental rule and specifically, Oklahoma's inclusion in such rule. For example, the basis for OG&E's inclusion in the supplemental rule is based on air emission modeling that shows Oklahoma sources

impacting a single county in Michigan; a county that actually is currently in attainment with the ambient air quality standards.

OG&E cannot predict the outcome of such challenges and is evaluating what emission controls would be necessary to meet the proposed standards, its ability to comply with the standards in the timeframe proposed by the EPA and the associated costs, which could be significant.

If the rules stand, OG&E believes that compliance would be enormously difficult within the timelines proposed by EPA. Compliance would likely require accelerating the installation of low NOx burners and uneconomic dispatch of our generating units during peak periods coupled with reliance on large volumes of purchased power or purchased allowances (assuming that allowances are available for purchase).

D. Other Regulatory Issues

In addition, OG&E is studying the impacts on the company and our customers of various other pending EPA regulations, including changes to the National Ambient Air Quality Standards and potential Greenhouse Gas regulations. Moreover, there are a number of non-air emission regulations that complicate the decisions discussed above.

For example, with respect to cooling water intake structures, Section 316(b) of the Federal Clean Water Act requires that their location, design, construction and capacity reflect the "best available technology" for minimizing their adverse environmental impact via the impingement and entrainment of aquatic organisms. In March 2011, the EPA proposed rules to implement Section 316(b) and, on August 18, 2011, OG&E filed comments with the EPA on the proposed rules. OG&E anticipates that the proposed rules will be finalized in mid-2012. In the interim, the state of Oklahoma requires OG&E to implement best management practices related to the operation and maintenance of its existing cooling water intake structures as a condition of renewing its discharge permits. Once the EPA promulgates the final rules, OG&E may incur additional capital and/or operating costs to comply with them. The costs of complying with the final water intake standards are not currently determinable, but could be significant. When these rules are

finalized, OG&E will again have to choose whether to invest new capital in existing units whose lives and continued use could be significantly affected by other rules.

Another example of a proposed EPA rule is the proposed rule entitled “Hazardous Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals [“CCRs”] From Electric Utilities.” The Agency is seeking to establish federal regulations designed specifically for the management of CCRs generated by the electric power sector (*i.e.*, electric utilities and independent power producers) that utilize coal to generate electricity. The two primary regulatory options on which the Agency seeks comment include (i) the regulation of CCRs destined for disposal in landfills or surface impoundments as a listed “special waste” under the hazardous waste regulations of Subtitle C of the Resource Conservation and Recovery Act (“RCRA”) and (ii) the regulation of CCRs destined for disposal in landfills or surface impoundments as a non-hazardous solid waste under Subtitle D of RCRA. The Agency is also seeking comment regarding a number of variants under each option, including the Subtitle D “Prime” option which is identical to the Subtitle D option except that it provides for existing CCR surface impoundments to operate for the remainder of their useful lives without having to retrofit with composite liners and leachate collection systems. On November 19, 2010, OG&E submitted comments on the proposed rule. OG&E is currently evaluating how this proposed rule, if finalized, would impact OG&E’s existing and future units.

III. OG&E’s Assessment of the regulatory climate in the aftermath of Executive Order 13563

When OG&E first looked at the President’s Executive Order 13563 over a year ago on January 18, 2011, we were encouraged that the direction being given to EPA and the other federal agencies would have a welcome, therapeutic impact in improving our ability to meet the legitimate environmental objectives that Oklahomans and Americans in general desire. But, when we observe the regulatory landscape that we are facing in 2012 in terms of the gamut of EPA’s rulemakings, OG&E does not see EPA successfully balancing the Executive Order’s laudable objectives of protecting public health and

safety and environmental quality on the one hand with promotion of economic growth, innovation, competitiveness and job creation. OG&E does not see EPA improving its processes by using the best available science or by truly being interested in allowing for meaningful public participation and an open exchange of ideas as called for in the Executive Order. OG&E most certainly does not see EPA's regulatory approach as promoting predictability and reducing uncertainty - if anything the compliance timelines for multiple rules, final and pending, that I have mentioned have acted to significantly increase unpredictability and uncertainty for utility investment. And OG&E does not find that EPA has taken into sufficient account the comparative benefits and cost of its regulations from either a quantitative or qualitative perspective.

For example, OG&E does not view the EPA's rejection of Oklahoma's regional haze SIP as being consistent with the Executive Order and achieving the stated environmental results on a more cost-effective or creative basis. Also, EPA's decision to include Oklahoma in CSAPR based upon controversial modeling assumptions that show an impact on a lone county in upstate Michigan does not strike us as use of best science. We cannot conclude that EPA is promoting economic efficiency, predictability of investment and competition by insisting on an unrealistic time line for compliance with UMACT. As embodied in the Executive Order, we expect the values of cost-effectiveness, good science, fair evaluation of alternatives and the like to be essential elements of how EPA conducts its critical mission.

It is imperative that the subcommittee understand that we are not wrestling with compliance with EPA's regulations in a vacuum. To the contrary, utilities such as OG&E are dealing every single day with the demands for all-time high investments in new transmission and distribution, renewable generation, efficiency and demand side improvements. These things all produce capital demands on utilities and their ratepayers at unprecedented levels and in a capital market which remains very challenging. In our case, OG&E's current capitalization is \$5.5 billion and its annual operating revenue is \$3.9 billion. Add to that an additional \$1 billion (or more) in scrubbers that EPA would require us to install just to comply with the regional haze FIP, and you can readily see the consequences. Such scrubber investment would be the largest single capital investment in OG&E's history, increase our existing capital commitments by 30 percent, and lead to

dramatic increases in customer rates. A mandate to invest over \$1 billion would make it difficult for OG&E to continue focusing on things like wind energy development, and energy efficiency and demand side management and will make it more difficult to invest in the base level commitments for maintaining and operating its business.

A switch to natural gas is similarly expensive because of stranded costs, pipeline construction costs, fuel cost fluctuations, and other capital costs for new or retrofitted gas-fired units. From a customer's perspective, the cost of those capital investments and a likely higher fuel cost would together increase the price customers pay for electricity in the years to come.

OG&E's competitive electric rates are a critical contributor to Oklahoma's economic welfare and competitiveness. Jobs in Oklahoma depend on our ability to provide the energy and energy infrastructure to power the state's economy. We cannot afford to be cavalier with our customers' money, or with the impact such rate increases would have on our state's economy, jobs and competitive viability. If we can achieve the same desired environmental results at a lower cost - which we think was President Obama's laudable intention underlying Executive Order 13563 - we believe we have an obligation to do so. That is the nature of our current regional haze dispute with the EPA. OG&E and all the other interests in the state working with our state agencies came up with a SIP that improved visibility, but did not necessarily entail the expense of scrubbers.

The timetables for implementing the various rules are also creating uncertainty because the rules are not synchronized and harmonized. We can do most anything EPA rules require in a more economically rational manner if we are given enough time to do so. But, the overlay of Regional Haze mandates with potentially different technology demands and related compliance schedules for such items as UMACT, CSAPR, and the soon to be seen greenhouse gas regulations magnify our unpredictability problem significantly. For an industry that makes strategic plans covering 10 to 20 year periods, a three to four year timetable to make these very important decisions on retrofitting or conversion seems very strict.

The strict and unpredictable timetables also could affect the reliability of service. Because almost every utility in the various regions is impacted by some or all of these

rules, there needs to be coordination to avoid major regional reliability problems. Not only does maintaining reliability take great care and coordination among many interested parties, it is likely to require time to plan for coordinated construction of emission control technology and the installation of needed transmission system upgrades. These considerations alone could jeopardize utilities' ability to meet EPA's compliance deadlines, not to mention creating significant costs that will be passed on to utility customers.

We want and need - and frankly our customers deserve - to be able to see how all these regulatory obligations will come together in a single regulatory matrix. We need to see all the new rules and evaluate how they relate to one another holistically. This will allow us to create a coordinated, rational plan for selecting compliance strategies from the range of options in a way that makes sense to our state economies, our ratepayers, and the environment. Once we determine what can work and at what cost, we need time to move those decisions through our state public service commissions, which have a rightful and primary role to play in all of this. We also need to coordinate with our Regional Transmission Organizations and the North American Electric Reliability Corporation ("NERC") to ensure limited reliability concerns.

EPA seems to underestimate the significant role that state public service commissions play in our industry, particularly in those states, like Oklahoma, with vertically integrated utilities. Our Oklahoma Corporation Commission and the Arkansas Public Service Commission play a legitimately primary role in reviewing all our capital investments for prudence and for rate impacts. And nothing we do as a utility - literally nothing - is done without extremely careful consideration for what our capital investments may mean for our rates and for the economic impact of those rates on our customers and our state economies. The point is that the uncertainty that EPA's rulemakings generate only prove more frustrating for us when we know we must be able to justify our compliance decisions, the rate impacts, and the prudence of our actions.

IV. Conclusion

OG&E wants to thank this subcommittee for allowing us to present our views and provide our perspective. We would hope that the result of the hearing today would be for

the Subcommittee to work together on a bi-partisan basis to see the objectives of President Obama's Executive Order 13563 become elemental drivers of all that EPA does. We are pleased to provide any further information that the subcommittee may think is useful.

Mr. STEARNS. I thank the gentleman.

Mr. Luoto, welcome, for 5 minutes.

TESTIMONY OF ROBERT A. LUOTO

Mr. LUOTO. Chairman Stearns, distinguished members of the Subcommittee on Oversight and Investigations, my name is Bob Luoto, and I am a third-generation lifelong professional logger. My wife Betsy, son Kirk, and I own and operate Cross and Crown, which is based out of Carlton, Oregon. During my almost 38 years as a professional logger, I have proudly served as a president and board member of both the Associated Oregon Loggers and the American Loggers Council. The Associated Oregon Loggers has named me Logger of the Year and my wife Betsy was named Woman of the Year for community and philanthropic leadership. Currently, I serve as board chairman for the Sustainable Forestry Initiative.

I consider myself very blessed to have the opportunity to share with you personal thoughts on the enormous, increasing uncertainty created by our regulatory system. Despite the stated intent of Executive Order 13563, it is contributing to the collapse of the professional logging community in the United States.

Our Nation's forest wealth supports, among other things, an industry critical to both our national economy, as well as hundreds of rural communities like the one I call home in Western Oregon. The forestry sector in the United States is the world's largest, supporting almost 1.1 million full-time jobs and generating over \$108 billion to our national economy annually.

I am so proud of my family's history and business to contribute to the world's greatest forestry country. Currently, we employ 40 men and women and have an annual payroll of almost \$1.5 million, which includes comprehensive health benefits, retirement 401K, and vacation pay. We have two trained foresters on staff and all our employees have been trained in Best Management Practices by the Oregon Professional Loggers Master Logger Program, which was created to satisfy the strict environmental standards set by the Sustainable Forestry Initiative.

However, as we look closer at the forestry sector, we see that the most critical component, the men and women who actually harvest and transport the wood to be used by the woods products industry may soon be lost forever. From 2001 to 2011, the United States logging workforce has declined from 73,500 to 48,400, a loss of almost 25,000 or 35 percent. Further, the logging workforce has lost jobs each and every year between 2001 and 2011.

My home State of Oregon has suffered greatly as well. From 2001 to 2010 we have also lost 33 percent of our logging jobs. Our company has had to lay off 10 people at the beginning of 2008 and only recently have we been able to hire some back. However, we have been having trouble hiring young men and women, even those from families of professional loggers because they are choosing not to enter or reenter our profession in light of the legitimate concern for the future of the industry. We see clear proof of this in recent significant aging of the logging workforce. In 2001, for instance, the average workforce was 40 years and a half; in 2010, it is 46 years old.

When we think of all the causes of the collapse of the professional loggers in the United States, the one that I feel tremendously, the volatility that is created by the regulatory system, is one of the most significant. You need to look no further than the tremendous uncertainty created for professional loggers from the recent 9th Circuit Court of Appeals decision that invalidated the EPA's Silvicultural Rule. This rule, which has been in effect for almost as long as I have been a logger, excludes silvicultural activities such as construction of logging roads from certain permitting requirements under the Clean Water Act. The EPA adopted this exclusion because professional loggers like me are trained to use best management practices and otherwise comply with State regulations and the Clean Water Act and prevent water pollution.

Since the construction of logging roads is essential to most loggers' businesses, many are concerned about what form and cost this completely new permitting requirement will be, as well as how this may otherwise affect us and allow other people to try to interfere with our businesses. If we can't build roads, our logging operations will come to a halt and eliminate not only our company and jobs but the companies that rely on us for our business.

As I read Executive Order 13563, I feel the EPA has been ordered to quickly resolve the uncertainty created by the invalidation of the Silvicultural Rule. So Executive Order 13563 states, "some sectors and industries face a significant number of regulatory requirements, some of which may be redundant and consistent or overlapping." In light of this instruction, the EPA should be working with Congress today to pass the Silvicultural Regulatory Consistency Act, H.R. 2541, and amend the Clean Water Act to explicitly permit the long-standing Silvicultural Rule.

And I would like to thank Representative Sue Myrick and Mike Ross, esteemed members of this subcommittee, for their sponsorship of this Act. Make no mistake, the invalidation of the Silvicultural Rule is only one of the many sources of regulatory uncertainty facing our professional loggers. Further sources of regulatory uncertainty could be how the EPA will treat bioenergy from woody biomass for the purpose of greenhouse gas emissions. In addition, there is no end in sight to the litigation of our national forests in our State, which has had a huge impact on my home State of Oregon. Oregon is made up over 55 percent National Forest land and we cannot reasonably even use these to help our lives in our communities. Many Oregon counties are now facing enormous budget shortfalls, increased poverty, and related social problems, and this has taken a toll not only on the professional loggers and the forestry sector but on our most important resource, our children.

In conclusion, I would like to make it very clear that I agree with the core principles of 13563, but in order for this regulatory system to meet all of these goals, the system must emphasize long-term certainty. That is very crucial to this whole thing.

On behalf of my wife Betsy, my son Kirk, my daughter Marisa, my daughter-in-law Jenna, son-in-law Jesse, and my grandchildren Liam, Finn, Landon, and Lydia, I would like to thank you for hearing—I got them all in there—

Mr. STEARNS. I think you did.

Mr. LUOTO [continuing]. Bit of a mouthful—I will take questions later on. Thank you.

[The prepared statement of Mr. Luoto follows:]

Summary of Testimony of Robert A. Luoto
Before the Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
Hearing on “Regulatory Reform Series #8 – Private Sector Views of the
Regulatory Climate One Year after Executive Order 13563”
February 16, 2012

- The enormous and increasing uncertainty created by our regulatory system is contributing to the collapse of professional logging in the United States.
- The United States is the world’s fourth most forested country and has the world’s largest forestry sector – it supports almost 1.1 million full-time jobs and adds \$108 billion to our economy annually.
- The most critical component of the forestry sector – our professional loggers who harvest and transport the wood needed by the sector – is also the most at risk.
- From 2001 through 2011, the professional logging workforce in the United States has declined from 73,500 to 48,400 – a loss of 25,100 jobs or 35 percent.
- From 2001 through 2010, the median age of the professional logger increased from 40.5 to 46 years of age.
- Key sources of regulatory uncertainty that harm professional loggers include the invalidation of the “Silvicultural Rule,” the treatment of forest bioenergy for greenhouse gas regulations, and the prevalence of lawsuits to prevent harvesting timber from Federal lands.

Testimony of Robert A. Luoto
Before the Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
Hearing on “Regulatory Reform Series #8 – Private Sector Views of the
Regulatory Climate One Year after Executive Order 13563”
February 16, 2012

Chairman Stearns and distinguished Members of the Subcommittee on Oversight and Investigations, my name is Bob Luoto, and I am a third-generation and lifelong professional logger. My wife, Betsy, son, Kirk, and I own and operate Cross and Crown, Inc., a commercial logging business based out of Carlton, Oregon. During my almost 38 years as a professional logger, I have proudly served as a President and Board Member for both the Associated Oregon Loggers and the American Loggers Council. The Associated Oregon Loggers has named me Logger of the Year and also named Betsy Woman of the Year for her community and philanthropic leadership. Currently, I serve as the Board Chairman for the Sustainable Forestry Initiative. In all of our roles, Betsy, Kirk, and I have tirelessly advocated on behalf of professional loggers and their communities, and I consider myself very blessed to have the opportunity to share with you my personal thoughts on how the enormous and increasing uncertainty created by our regulatory system – despite the stated intent of Executive Order 13563 – is contributing to the collapse of professional logging in the United States.

In order for us to appreciate the impact of the regulatory system upon our professional loggers, we must first appreciate our forests and what they provide us. According to the United Nations Food and Agriculture Organization and its 2011 report

entitled, *State of the World's Forests*, the United States is the world's fourth most forested country with over 304 million hectares or 750 million acres of forest area. Further, over the last decade, our forests have grown by more than 380,000 hectares or 938,000 acres.

Our Nation's forest wealth supports, among other things, an industry critical to both our national economy, as well as hundreds of rural forestry communities like the one I call home in western Oregon. According to the United Nations Food and Agriculture Organization, the forestry sector in the United States is the world's largest, supporting almost 1.1 million full-time jobs and generating more than \$108 billion dollars for our economy annually.

I am so proud that my family's history and business contribute to the world's greatest forestry country. Currently, we employ 40 men and women and have an annual payroll of almost one and a half million dollars, which includes a comprehensive health insurance package, in addition to 401-K retirement plans, and vacation pay. We have two trained foresters on staff, and all our employees have been trained in Best Management Practices by the Oregon Professional Loggers Master Logger Program, which was created to satisfy the strict environmental standards set by the Sustainable Forestry Initiative. We also have nine log trucks and other support trucks that have over a million miles travelled without an accident or serious violation.

However, as we look closer at the forestry sector, we see that its most critical component – the men and women who actually harvest and transport the wood to be used by the wood products industry – may soon be lost forever. According the Bureau of

Labor Statistics *Current Employment Statistics Survey*, from 2001 through 2011 the United States logging workforce declined from 73,500 to 48,400 – a loss of almost 25,100 jobs or 35 percent. Further, the logging workforce has lost jobs each and every year from 2001 through 2011.

My home state of Oregon has suffered greatly as well. According to the Bureau of Labor Statistics and Department of Labor *Quarterly Census of Employment and Wages*, from 2001 through 2010 the Oregon logging workforce declined from 7,528 to 5,030 – a loss of almost 2,498 jobs or 33 percent. Our company had to lay off 10 people at the beginning of 2008, and only recently have we been able to hire some back. However, we are having trouble hiring young men and women – even those from the families of professional loggers – because they are choosing not to enter or reenter the logging workforce in light of their legitimate concerns about the future of forestry. We see clear proof of this in the recent significant aging of the logging workforce. According to the Bureau of Labor Statistics and Bureau of the Census *Current Population Survey*, in 2001, the median age of professional loggers in the United States was 40.5 years of age. By 2010, the median age had increased to 46 years of age. This increase of 5.5 years was more than double the increase seen over that same period for all industries combined.

When I think of all of the causes for the collapse of professional loggers in the United States, I feel that the tremendous volatility and uncertainty created by our regulatory system is one of the most significant. You need look no further than the tremendous uncertainty created for our professional loggers from the recent decision by the Ninth Circuit Court of Appeals in *NEDC v. Brown*, which invalidated the United States Environmental Protection Agency's (EPA) "Silvicultural Rule." This rule –

which has been in effect for almost as long as I have been a professional logger – excluded silviculture activities such as the construction of logging roads from certain permitting requirements under the Clean Water Act. The EPA adopted this exclusion because professional loggers, like me, are trained to use Best Management Practices and otherwise comply with many state regulation and guidelines to protect against water pollution. Since the construction of logging roads is essential to most professional loggers’ businesses, many are concerned about the form and cost of these completely new permitting requirements, as well as how they may otherwise be used by others to interfere with their logging operations. Logging roads are the lifeblood of our operation. They provide access into the forest so that we can harvest the timber and get it to the mills. If we can’t build roads, our logging operations will come to a halt and eliminate our company, its jobs, and the many other companies that rely upon us for their business.

As I read Executive Order 13563, I feel that the EPA has been ordered to quickly resolve the uncertainty created by the invalidation of its Silvicultural Rule. For example, Executive Order 13563 states, “Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. ... Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.” In light of this instruction, EPA should already be working with Congress to amend the Clean Water Act to make its own Silvicultural Rule explicitly permitted within the statute since Best Management Practices and state regulations and guidelines are already in place. While Congress recently delayed imposition of the new permitting requirements for this fiscal

year, to my knowledge the EPA has not asked Congress to resolve this issue once and for all. While appreciated, the one-year delay does not remove the terrible uncertainty we face, and I would respectfully ask that Congress schedule hearings immediately involving the EPA and other forestry stakeholders to pass the Silviculture Regulatory Consistency Act (HR 2541). I would like to thank Representatives Sue Myrick and Mike Ross, esteemed Members of this Subcommittee, for their sponsorship of this Act.

Make no mistake, the invalidation of the Silvicultural Rule is only one of many sources of regulatory uncertainty facing our professional loggers. Further sources of regulatory uncertainty include how the EPA will choose to treat bioenergy from woody biomass for the purpose of greenhouse gas emissions regulations. Despite the promise that woody biomass holds for rural forestry communities that need more jobs, clean energy, and improved forest management, what professional logger or investor in his or her right mind would invest in new employees, facilities, or equipment to harvest and use woody biomass for energy without knowing how the EPA will choose to treat it after it completes its study in three years?

In addition, there is no end in sight for the uncertainty created by countless lawsuits that prevent the harvesting of timber from Federal lands. We are now managing our Federal lands by crisis and allowing infestations and fire to ravage our forests and destroy homes and communities, rather than having the most capable and professional loggers in the world sustainably manage the forests, create jobs, and pay taxes. The impact of this on my home State has been severe – Oregon is made up of over 55 percent National Forest land that cannot be used reasonably to improve the lives of those in our local communities, and many of Oregon’s counties are now facing enormous budget

shortfalls, increasing poverty rates, and related social problems. This type of land management by over-regulation and litigation is therefore taking its toll on not only professional loggers and the forestry sector, but on all of our most important resource -- our children.

In conclusion, I would like to make very clear that I agree with the core principle set forth in Executive Order 13563 -- "Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." In order of our regulatory system to meet all of these goals, the system must emphasize long-term certainty for those affected by it. The regulatory system today creates uncertainty through numerous and ever-changing regulations, and those limited few who know how to use and access this regulatory system take advantage of the uncertainty as an additional means to restrict behavior -- of professional loggers as well as others testifying today.

On behalf of my wife Betsy, son Kirk, daughter Marisa, daughter in-law Jenna, son in-law Jesse, and grandchildren Liam, Finn, Landon, and Lydia, I would like to thank you sincerely for allowing me to share my concerns about the future of professional logging in the United States. I am happy to answer any questions that you have.

Mr. STEARNS. I think you forgot your dog.

Mr. LUOTO. I did. Yes. But I will get it in there later.

Mr. STEARNS. Dr. Mitchell, we want to recognize you and welcome you for your 5 minutes.

TESTIMONY OF MARK A. MITCHELL

Mr. MITCHELL. Thank you. Good morning, Chairman Stearns and Ranking Member DeGette and members of the subcommittee. My name is Dr. Mark Mitchell and I am a public health physician and I focus on environmental health, and I am also co-chair of the Environmental Health Task Force of the National Medical Association, which is representing over 40,000 African American physicians and their patients. I am here to testify about the need for strong regulation to protect the public health and the health of workers, as well as to maintain public confidence in the safety of business and the abilities of government to protect the U.S. residents.

I was previously the director of the Hartford, Connecticut, Health Department, and in that capacity, it became apparent to me that although the public health was generally improving, there were certain diseases and conditions that were increasing in frequency. Those conditions are things such as asthma, cancer, learning disability, obesity, and diabetes. I also noticed that the conditions are more likely to be caused by environmental factors and could lead to a larger part of the American population suffering major disabilities and premature death if these trends continue. This is even more important in African American, Latino, and low-income communities where there are greater hazardous environmental exposures, as well as greater health disparities. These environmental risk factors can only be reduced through local, State, national and international environmental regulations.

Although environmental regulation is so important, the only group that I was hearing from when I was health director about environmental regulation was the regulated community complaining about too much regulation when it was apparent to me that the regulations support business by protecting their credibility and that there is not enough regulation to protect environmental health. I want to make sure that when people walk into a restaurant that they feel safe eating in that restaurant, that they don't expect that they are going to get sick from eating in that restaurant, for example.

When I talked to people in my community, they assumed that government would automatically have their interest in mind and would act in the best interest of the public to protect them. I could see that this was not always the case. This realization persuaded me to focus my career on environmental health and environmental justice issues as an advocate for the public. When I talk to other physicians both within and outside the National Medical Association about environmental health, they are often very concerned. They usually recognize the significant morbidity and mortality that they are seeing in their patients due to hazardous environmental exposures. And as they learned more about the environment and about environmental regulations, they become even more concerned for the health of their patients.

I was previously on a U.S. Food and Drug Administration advisory panel on blood and blood products, and there I was surprised at the number of foreign companies that wanted their products approved by the FDA, even though they were not looking to sell those products in the United States. This is because of the FDA's reputation for protecting health. I was told that they could use their FDA approval as a guarantee to potential customers that their products are safe and effective. This is why regulation can be good for business and good for the public.

I am also aware about products such as DES, or diethylstilbestrol, that were not approved by the FDA and that went on to cause major disability in other countries where it was approved. Generations of Americans were protected by the FDA's prevention of this drug from coming to market and causing this disability. Yes, it is true that regulations need to be updated from time to time to keep up with changing needs, including changing products, technologies, and lifestyles. Ineffective regulations need to be dropped, effective regulations need to be modified, and new regulations need to be developed to meet the new situation. Changes in regulations take time, often longer than 1 year.

Many businesses see the benefits of regulation and do not see regulation as overly intrusive on business. I work to get health protection regulations, such as chemical policy reform, developed on a State and national level. When I speak to businesses large and small about regulation, they are more often concerned about regulatory certainty and predictability than about the burden of meeting regulations.

The question that we were asked to answer as part of this panel was about what businesses have seen in the past year with regard to the regulatory change, and regulations actually take—there is a slow and deliberative process to dismantling regulations, which is the same process as creating regulations, so I would not expect to see much of a change within a 1-year period.

In conclusion, physicians are becoming more and more concerned about the effect of environmental exposure on health. The National Medical Association believes that our country needs to have strong health protective regulations on the local, State, and Federal levels. Strong regulations can keep the workforce healthy and productive, as well as keep healthcare costs lower. This is good for business, good for the workers, and good for America.

Thank you for the opportunity to speak, Mr. Chairman, and I am available to answer questions after the panel is finished.

[The prepared statement of Mr. Mitchell follows:]

Testimony by Mark A. Mitchell M.D., MPH
on
Private Sector Views on the Regulatory Climate One Year After
Executive Order 13563
before the
Subcommittee on Government Oversight and Investigations
House Committee on Energy and Commerce
February 16, 2012

Good Morning Chairman Stearns and members of the Subcommittee. My name is Dr. Mark Mitchell. I am a public health physician focusing on environmental health and I am Co-chair of the Environmental Health Task Force for the National Medical Association, representing over 40,000 African American Physicians and their patients. I am here to testify about the need for strong regulation to protect the public health and the health of workers as well as to maintain public confidence in the safety of business and the abilities of government to protect U.S. residents.

I was previously the Director of Health for the City of Hartford, CT. In that capacity, it became apparent to me that although the public health was generally improving, there were certain diseases and conditions that were increasing in frequency—such as asthma, cancer, learning disabilities, obesity, and diabetes. I also noticed that these conditions are more likely to be caused by environmental factors and could lead to a large part of the American population suffering major disabilities and premature death if these trends continue. This is even more important in African American, Latino, and low-income communities where there are greater hazardous environmental exposures and health disparities. These environmental risk factors can only be reduced through local, national and international environmental regulations.

Although environmental regulation is so important, the only group I was hearing from about environmental regulation was the regulated community complaining about too much regulation, when it was apparent to me that the regulations support business by protecting their credibility and that there is not enough regulation to protect environmental health. When I talked to people in my community, they assumed that government would automatically have their interest in mind and would act in the best interest of the public to protect them. I could see that this was not always the case. This realization persuaded me to focus my career on environmental health and environmental justice issues as an advocate for the public.

When I talk to other physicians both within and outside the National Medical Association about environmental health, they are often very concerned. They usually recognize the significant morbidity and mortality that they are seeing in their patients due to hazardous environmental exposures. As they learn more about the current state of environmental health and environmental regulation, they become even more concerned.

I was previously on a U.S. Food and Drug Administration advisory panel. I was surprised at the number of foreign companies that wanted their products approved by the FDA, even though they were not looking to sell those products in the U.S. This is because of FDA's reputation for protecting health. I was told that they could use the FDA approval as a guarantee to potential customers that their products are safe and effective. This is why regulation is good for business and good for the public.

I am also aware about products, like thalidomide, that were not approved by FDA and went on to cause major disabilities in other countries where it was approved for use. Generations of Americans were protected by FDA's prevention of this drug from coming to market in the U.S.

Yes, it is true that regulations need to be updated from time-to-time to keep up with changing needs including changing products, technologies, and lifestyles. Ineffective regulations need to be dropped, effective regulations need to be modified and new regulations need to be developed to meet new situations. Changes in regulations take time, often longer than one year.

Many businesses see the benefits of regulation and do not see regulation as overly intrusive on business. I work to get health protective regulations, such as chemical policy reform, developed on a state and national level. When I speak to businesses large and small about regulation, they are more concerned about regulatory certainty and predictability than about the burden of meeting regulations.

Conclusion

In summary, physicians are becoming more and more concerned about the effect of environmental exposures on health. The National Medical Association believes that our country needs to have strong health protective regulations on the local, state and federal levels. Strong regulations can keep the workforce healthy and productive as well as keep healthcare costs lower. This is good for business, good for the workers, and good for America.

Thank you for this opportunity to speak, Mr. Chairman. I am available to answer any questions that the committee may have.

Mr. STEARNS. I thank you, Dr. Mitchell.
Mr. Williams, you are recognized for 5 minutes.

TESTIMONY OF HOWARD WILLIAMS

Mr. WILLIAMS. Thank you, Chairman Stearns and Representative DeGette, especially thank you to the minority for courageously inviting an unrepentant conservative Republican to testify.

Economic uncertainty is not the primary deterrent to growth and development in today's business. I will repeat two comments that Representative DeGette made this morning in her opening remarks from the Sustainable Business Council. Weak demand is business owners' biggest problem. Small business owners see regulations as a necessary part of a modern economy so long as they are fair and reasonable.

I manage a division of an American-owned small multinational corporation. The division that I manage is \$110 million per year, 450 people, and we make and develop architectural building products. And clearly, these last 3 years have been the most difficult years and the most uncertain years from an economic standpoint. And while we are not oblivious to regulation, regulation has not for a moment stalled or stopped our capital expenditures, our market and new product developments. After a flat year in 2009, 2010 as well as 2011 rebounded with double-digit year-over-year growth. And in the construction sector, that growth was not mirrored by any other segment within the construction sector.

Our rate of annual growth is promising and we in a thriving and free market economy recognize it is that thriving free market economy that self-regulates demand, supply, and price, but it does not uniformly or equitably self-regulate health, safety, and the environment. Entrepreneurs are free to invest, to win or lose their investments, but in the areas of health, safety, and the environment, do we have the right to invest what is not solely ours to risk? We debate who will pay for the healthcare, and again, we are not oblivious as a business to where that intersection is rapidly looming. But failing to address substantiated causation, we continue to amass an environmental and health debt that will be as burdensome to the future as our current economic debt is to the present. These are debts that only business can pay because only business generates capital.

Increasingly, the causes of cancer, diseases such as autism, Parkinson's, and other illnesses are being linked to chemicals of concern and yet we struggle to reform decades-old regulation. In the absence of TSCA reform, business costs are rising, not because of Federal regulation, but for lack of it. States are enacting their own chemical regulations, businesses are requiring environmental declarations revealing chemical makeup of products and materials, and businesses are individually investing in meeting consumer and business-to-business needs. A Federally harmonized chemical regulation will set and control the health and safety aspects while making business information available.

Reduced economic regulation removes uncertainty and encourages the free market to invest and grow. With freedom comes the responsibility to conduct business in ways that create and sustain a durable economy. It is in business' self-interest to do that. How-

ever, in the areas of health, safety, and the natural environment, the invisible hand of the free market does not naturally yield to the good of the whole.

We conservatives will readily hold up *Atlas Shrugged* and we will point at Washington and say overreaching, overreaching, overreaching, but ultimately, the storyline in that book is as much about business and creating or condemning adverse, self-serving business interests as it is the overreach in the government.

We have invested in the research and the capital equipment necessary to remove chemicals of concern from our products. Much of our recent growth is directly attributable to that work, to those investments, and to that research. Such investment would almost argue against regulation but differentiation by regulation is not an acceptable business practice. We have no right to gain at the risk of the health, safety, and environment of either the present or the future. A strong America is strong economically, physically, and militarily. Regulations are not generally associated in that context, but in the areas of health, safety, and the natural environment, two of the three will stand or fall and responsible regulation helps to ensure that they stand.

Thank you.

[The prepared statement of Mr. Williams follows:]

Howard Williams' Testimony

Regulatory Reform Series #8 – Private-Sector Views of the Regulatory Climate One Year After Executive Order 13563; Subcommittee on Oversight and Investigations.

Economic uncertainty, not regulation, is the primary deterrent to business growth and development.

A recent survey by the American Sustainable Business Council reveals

- Weak demand is small business owner's biggest problem.
- Small business owners see regulations as a necessary part of a modern economy and believe they can live with them if they are fair and reasonable.

I manage an \$110,000,000 division of an American owned, small multinational business specializing in the development and manufacture of architectural building products.

Although the past 3 years have been some of the most uncertain times, we have continued with the investment strategies that have produced sustained growth for 64 years.

Our investment decisions are made on the basis of market research and financial analysis.

Regulation did not give us cause to question our recent investments; economic uncertainty was our greatest concern.

After a flat year in 2009, our growth curve resumed and posted double digit, year-over-year increases in 2010 and 2011.

Our rate of growth exceeds the annual growth of the market sector in which we operate.

A thriving free market economy self-regulates demand, supply and price, but it does not uniformly, or equitably, regulate health, safety and environmental responsibility.

Entrepreneurs are free to invest, to win or lose their investments. But in the areas of health, safety and the environment do we have the right to invest what is not solely ours to risk?

We debate who will pay the healthcare bill, but spend too little time on causation.

By failing to address substantiated causation we continue to amass a health and environmental debt that will be as burdensome to future generations as our national debt.

Debts that only business can pay because only business generates capital.

Increasingly, the cause of cancer and diseases such as Autism, Parkinson's and other illnesses are being linked to chemicals of concern, and yet we struggle to reform decades old legislation.

In the absence of TSCA Reform, business costs are rising not because of federal regulation, but for lack of it. States are enacting their own chemical regulations. Businesses are requiring environmental declarations revealing the chemical make-up of products and materials.

Businesses are individually investing in the answers to increasing consumer and Business-to-Business demands.

Federal harmonized chemical regulation will set and control the health and safety aspects while making information accessible to all businesses.

Reduced economic regulation removes uncertainty and encourages the free market to invest and grow. With freedom comes the responsibility to conduct business in ways that create and sustain a durable and enduring economy.

It is in business's self-interest to do so.

However, in the areas of health, safety, and the natural environment, the invisible hand of a free market does not naturally yield to the good of the whole.

Some readily hold a copy of Atlas Shrugged in one hand and point to an overreaching government with the other, but ignore that the storyline is equally condemning of self-serving business interests.

We have invested in the research and capital equipment that has allowed us to remove chemicals of concern from our major product line and to begin that work in other products.

Much of our recent growth is directly attributable to this work and we currently enjoy the high ground of an uneven playing field because of our investments.

Such investment would seem to argue against regulation.

Differentiation by regulation is not an acceptable business practice.

We have no right to gain at the risk of the health, safety and environment of either the present or the future.

A strong America is strong economically, physically and militarily. Regulation is not always associated with that context, but in the areas of health, safety and the natural environment two of the three ultimately stand or fail. Regulation helps ensure they stand.

Mr. STEARNS. I thank you. And I will start with my first questions.

Mr. Williams, you actually believe that economic uncertainty is totally divorced from regulatory uncertainty? Yes or no?

Mr. WILLIAMS. No.

Mr. STEARNS. OK. Because, you know, if you are a business and you are operating a Hardee's and you hear there is a huge amount of regulation, the first thing you do as an owner, operator, or franchisee, you say hold it, I don't want to invest anymore capital until I understand what the regulatory environment is. And you sort of indicated in your opening statement that economic uncertainty is not tied to regulatory uncertainty. And so that is just my observation.

Let me go to Mr. Luoto. You have made a very passionate opening statement. I was just struck by the fact that you said that there was a 33 percent decline in your business and obviously you are one of the persons who said when the President did his op-ed and he talked about his Executive Order 13563, you would say there was a genuine problem out there.

Mr. LUOTO. Yes, it is obvious in what has happened to our industry. We have had litigation on National Forest, we have had litigation now on our Clean Water Act and the EPA has by the 9th Circuit. So that has really given us a huge uncertainty.

Mr. STEARNS. Certainly, that impact from EPA, doesn't that create an economic uncertainty in your mind?

Mr. LUOTO. Yes.

Mr. STEARNS. Yes. Ms. Walz, do you feel that the impressions you got based upon this Executive Order 13563 that the President issued, did he truly understand the impacts of the regulatory climate on the private sector, including small businesses?

Ms. WALZ. I am not certain if he understood at that time of writing it, I guess, but I would say I that I have not seen any progress—

Mr. STEARNS. Right.

Ms. WALZ [continuing]. That it has actually accelerated. We are seeing more regulation at a faster pace.

Mr. STEARNS. Mr. Luoto, do you get the impression on these regulations in your businesses that these regulations—do you feel that they are evaluated in terms of an economic impact or are they just not solution-oriented but sort of almost adversarial? What is your feeling?

Mr. LUOTO. You know, they are not solution-orientated really because, you know, litigation just stops everything. So there is no solution other than courts and litigation. So when we end up with that, we have no certainty. And to me, you know, we have got to have more certainty in our industry. That is why we are losing our people, we are losing jobs, and in Oregon especially with the National Forest, that has been a bone of contention for, you know, 25, 30 years that we have been going back and forth on.

Mr. STEARNS. So bottom line, this regulatory climate you have talked about has made it very difficult to preserve existing jobs?

Mr. LUOTO. It has. It is—

Mr. STEARNS. Yes. And Ms. Walz, my question to you is since this last executive order, do you perceive a net improvement in the

general regulatory climate facing your business or your industry more broadly?

Ms. WALZ. I do not see a net improvement. Regulations are coming out faster and more furiously.

Mr. STEARNS. OK. Mr. Puzder, a question for you. Do you think the Federal or State regulators generally think about ways in which they can render old or non-cost-effective rules less burdensome? Does that ever occur on their mind? Removing them from books before they come out with new regulations? That is, do they go backwards and look at what is on the books already before they ask for new ones?

Mr. PUZDER. We certainly haven't seen any evidence of that. As I said, we had that 11-page, single-spaced, 57 categories of regulatory issues we have to comply with when we build or operate a fast food restaurant. And that list doesn't get shorter; it just seems to get longer.

Mr. STEARNS. You make it clear that you are not an opponent of Federal regulations. In fact, you write that "I believe that our country needs government regulations to advance a number of social goals which the unfettered market will not accomplish on its own." What is it, then, in your view that causes certain regulations to go bad?

Mr. PUZDER. I think what happens is when your job is to create regulations to enforce a statute that Congress has enacted, people do so with great vigor. And I would say the vigor over the past few years has been phenomenal. We are seeing very, very aggressive regulation where I wish we just had a little more communication with the business community. And you can't always communicate with the associations that represent the businesses because, for example, the National Restaurant Association in our case represents a number of different kinds of restaurants from Morton's Steakhouse to Taco Bell to Carl's Jr. and Hardee's, and the concerns of each of those segments is different. So if you don't talk to people actually from the businesses—and I realize that there is maybe some resistance to people coming in here and complaining, which is why I tried not to complain. I mean, but there are issues and we think we can actually contribute to more sensible, efficient regulations and a regulatory structure that will accomplish the goals Congress wants to accomplish without damaging the business. You know, don't treat us as the enemy. We want to help and we are here to help.

Mr. STEARNS. We had a hearing on Obamacare and the waivers that occur and McDonald's got a waiver, Waffle House got a waiver. Did Hardee's apply for a waiver?

Mr. PUZDER. We got a waiver with respect to what are called Mini-Med plans. These are the same things that McDonald's and these other—and really everybody had to get those because if retailers didn't get those, then part-time employees or low-level full-time employees would have had no insurance coverage.

Mr. STEARNS. I guess specifically your restaurants, how many employees of the CKE restaurants currently receive Obamacare waivers on the law annual limits requirement?

Mr. PUZDER. Well, all of the employees—we have 21,000 company employees. All of the restaurant-level employees who do not

have a company-covered plan would be covered by that waiver. They would have the Mini-Med plan——

Mr. STEARNS. And if they didn't have that waiver——

Mr. PUZDER. —and that number is 1,100 currently enrolled in those plans.

Mr. STEARNS. And what would happen if you didn't have that waiver? What would happen?

Mr. PUZDER. Well, the insurance would go away. The insurance companies wouldn't issue those policies. They have annual caps so there——

Mr. STEARNS. So wouldn't the law, Obamacare, raise the cost of healthcare for you?

Mr. PUZDER. It will raise it by 150 percent is the best estimate.

Mr. STEARNS. So when the waivers run out, you are going to face a serious problem?

Mr. PUZDER. We are going to have to figure out a way to deal with a 150 percent increase and a very substantial cost.

Mr. STEARNS. I thank you. My time has expired.

Ms. DEGETTE. Well, let me ask you a question, Mr. Puzder. Before the Affordable Healthcare Act was enacted by Congress, did you offer health insurance to your employees?

Mr. PUZDER. We offer health insurance to all of our employees. At the lower level it is employee-paid. It is the Mini-Med plans——

Ms. DEGETTE. Right, so——

Mr. PUZDER [continuing]. Which are, I know, \$38 a month.

Ms. DEGETTE. Yes, those are like the part-time employees and people like that.

Mr. PUZDER. Part-time and we cover 60 percent——

Ms. DEGETTE. I am sorry. I only have 5 minutes. So for your lower-paid employees, what is the average amount that they make every year?

Mr. PUZDER. I do not know what the average amount of our lower-level——

Ms. DEGETTE. Well, what is the hourly rate? Do you have any idea?

Mr. PUZDER. I can tell you how many get the minimum wage. It is a small percentage——

Ms. DEGETTE. OK, but they are the lower-paid employees. Do you have any idea how much those insurance policies were costing for those people?

Mr. PUZDER. Well, most of them don't get those policies.

Ms. DEGETTE. Right. So how did they pay——

Mr. PUZDER. They go to the emergency room.

Ms. DEGETTE. Yes, they go to the emergency room. And there were 37 million Americans like that. So all of us were paying for those 37 million Americans, including your employees, to go the emergency room. That is why we passed the bill.

Mr. PUZDER. That is right.

Ms. DEGETTE. And I want to say that I really admire what your company has done with the nutrition information. I was looking at that and I think that is—because you did that voluntarily, right?

Mr. PUZDER. Yes.

Ms. DEGETTE. And there is these new regulations that are pending right now which would require any fast food business over a

certain number of employees to post something similar to what you guys have been doing for years, right?

Mr. PUZDER. No.

Ms. DEGETTE. OK. What is it then?

Mr. PUZDER. You know what the menu board is when you walk in a fast food restaurant?

Ms. DEGETTE. Right, yes.

Mr. PUZDER. They are requiring that you put the caloric—we have to redo all the menu boards—

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. To put the—

Ms. DEGETTE. No, no, I understand that but—

Mr. PUZDER. None of this other stuff is required.

Ms. DEGETTE. Right. What I am saying is they are requiring other people to post the caloric information like you have been doing voluntarily in your own way for years.

Mr. PUZDER. Yes.

Ms. DEGETTE. That is only part of what you have been doing. I understand.

Mr. PUZDER. Right.

Ms. DEGETTE. So did you know that the National Restaurant Association actually supports that regulation? Because before there was a patchwork of 50 State regulations that people had to comply with, yes or no?

Mr. PUZDER. I guess—

Ms. DEGETTE. Yes or no? Did you know the National Restaurant Association supports that?

Mr. PUZDER. Yes.

Ms. DEGETTE. OK. I happen to think—and I would be happy to work with you—if there is a business like yours that is actually doing this plus more, they should be able to get a waiver from that regulation. But there is something to be said for not making people comply with a patchwork of 50 State regulations.

Mr. PUZDER. No, that is absolutely right.

Ms. DEGETTE. Good, thank you.

Mr. PUZDER. And actually doing this is much cheaper than what the law requires so—

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. Restaurants should be—

Ms. DEGETTE. Right, but I think if you are doing a good job, you should be able to get a waiver and I comply with that.

Now, Ms. Walz, I want to ask you because you and I have actually talked about these issues before. With respect to these environmental regulations—the Regional Haze, the Utility MACT, the Coal Ash, all that—your main problem is you want to know what are the rules and how are you going to comply with them? And the uncertainty is a big part of what your problem is right now, isn't it?

Ms. WALZ. That is correct.

Ms. DEGETTE. I mean you have applied for the state SIP. We all support it. You haven't heard. That gives uncertainty, your business, right?

Ms. WALZ. Yes.

Ms. DEGETTE. And Mr. Shoop, that is part of your problem, too, uncertainty in regulation, right? And Mr. Luoto, you, too? You don't know what the regulations are going to be and that gives you uncertainty in making your business plan, right?

Mr. LUOTO. Yes.

Ms. DEGETTE. And Mr. Williams, when you do your business plan, you factor in the cost of those regulations to doing business, right?

Mr. WILLIAMS. Yes.

Ms. DEGETTE. OK. So I want to ask you, Mr. Shoop, you don't think that we should get rid of the environmental laws, do you?

Mr. SHOOP. Oh, absolutely not.

Ms. DEGETTE. No. And you don't think so, Ms. Walz, do you?

Ms. WALZ. No, I don't think so.

Ms. DEGETTE. I mean the Clean Air Act, for example, that provides a good public benefit, right? And—yes, Ms. Walz, I am sorry.

Ms. WALZ. Yes, it does provide public—

Ms. DEGETTE. And Tri-State has been complying with the Clean Air Act for decades.

Ms. WALZ. Correct.

Ms. DEGETTE. So what you need to have is regulations that make sense and that are certain and that are not overly burdensome, right?

Ms. WALZ. Correct.

Ms. DEGETTE. And you feel the same way, right, Mr. Shoop?

Mr. SHOOP. Yes.

Ms. DEGETTE. And Mr. Luoto, I assume you feel the same way, too? You don't think we should get rid of the Clean Water Act?

Mr. LUOTO. No.

Ms. DEGETTE. OK, good. So, see, we can find some agreement, Mr. Chairman. I just want to point one thing out in my remaining 19 seconds—two things. Number one, the President's executive order, which was roughly 1 year ago, supplemented and reaffirmed the principles of regulatory review established under Executive Order 12866. "Agencies have to propose or adopt regulations only when benefits justify costs, impose the least burden on society considering the cost of cumulative regulations, maximize net benefits, and select inter-regulatory approach, specify performance objectives, and identify and assess available alternatives to direct regulation." Now, you don't disagree with that, do you, Mr. Puzder?

Mr. PUZDER. Not at all.

Ms. DEGETTE. And Ms. Walz? Yes or no? Do you disagree with those goals?

Ms. WALZ. No.

Ms. DEGETTE. Mr. Shoop?

Mr. SHOOP. No.

Ms. DEGETTE. Mr. Luoto?

Mr. LUOTO. Agreed goals.

Ms. DEGETTE. Dr. Mitchell?

Dr. MITCHELL. Yes, I agree.

Ms. DEGETTE. And Mr. Williams?

Mr. WILLIAMS. I agree.

Ms. DEGETTE. OK. Just one last thing, Mr. Chairman. I just want to point out for the record that there were fewer regulations

issued by executive agencies for the first 3 years of this administration than from the first 3 years of the previous administration. And if there are regulations that are giving uncertainty or that are not tailored for their specific purpose, we all want to work together to fix those regulations. The wholesale elimination of the Clean Air Act or the Safe Drinking Water Act or environmental regulations or food safety, that is not the way to go about this.

And once again, for the eighth time, I hold out my hand to say let us work together on this because overly burdensome regulations are not in anybody's best interest.

Mr. STEARNS. I thank the gentlelady and we recognize Mr. Terry.

Mr. TERRY. Thank you. And Ms. Walz, has Tri-State complied with the Clean Water Act and the Clean Air Act?

Ms. WALZ. Yes.

Mr. TERRY. All right. So what we are talking about here in regulations are new proposed regulations, not whether or not you have complied with the last?

Ms. WALZ. That is true.

Mr. TERRY. And in your testimony you mentioned a couple. You mentioned Utili-MACT and Fly Ash. Those directly affect your ability to produce energy, correct?

Ms. WALZ. Correct.

Mr. TERRY. All right. Are there other like Boiler MACT that also impact your business?

Ms. WALZ. Yes, there is a long list of regulations, yes.

Mr. TERRY. So the issue is despite that there are some overall number that is similar to the number of regulations issued from one administration to the other, your industry is dealing with multiple ones at one time, correct?

Ms. WALZ. Yes.

Mr. TERRY. And what happens to the additional costs that are incurred to comply with the new rules?

Ms. WALZ. Those are passed directly on to the end users of electricity because we are a not-for-profit entity.

Mr. TERRY. So those costs are passed on.

Ms. WALZ. Right.

Mr. TERRY. Have you at least looked at Utili-MACT? At least with our utilities in Nebraska, they have to deal with CSAPR, Boiler MACT, Fly Ash, and Utili-MACT. The one that they think will be the most costly is Utili-MACT. Have you been able to determine what the cost per plant to comply with Utili-MACT?

Ms. WALZ. It varies from plant to plant. I would say—

Mr. TERRY. Sure.

Ms. WALZ [continuing]. The most expensive rule we are facing right now is Regional Haze.

Mr. TERRY. OK.

Ms. WALZ. However, there is a pancaking of these rules and you really look at MACT costs, add on what Regional Haze costs, add on what the new water effluent standards cost, add on what the Coal Ash costs, add on what the Boiler Rule costs, and this is an increasing cost over time. Quite honestly, it forces you to look at what point will you shut that facility down.

Mr. TERRY. Is that something that you are actually thinking about, that you may have to shut down a facility?

Ms. WALZ. We are looking at the economics of each of these rules and they have a potential, yes, to shut down existing plants.

Mr. TERRY. When combined.

Ms. WALZ. Correct.

Mr. TERRY. Getting back to Utili-MACT alone, have you been able to, you know, take any plant and say it is going to cost X millions of dollars to comply? Omaha Public Power has already said for their coal fire plant that really is only 10 years old, that they are going to have spend over 400 million. Have you done something similar?

Ms. WALZ. We have looked at the cost to our existing plants. We are already very highly controlled at Tri-State, at all of our facilities, so it is not as significant. The main issue we have is the fact that we have an air permit to build a new plant in Kansas and this rule will stop that. We cannot get a technology company to say that, yes, we can design and build to those new standards. So essentially it will stop—

Mr. TERRY. So a technology isn't even available to build to the new standards?

Ms. WALZ. It is not available.

Mr. TERRY. OK. Well, that is certainty, isn't it? You are certain that you can't comply; therefore, you don't build it.

Ms. WALZ. Yes.

Mr. TERRY. OK. Well, good. Then we have accomplished that.

One last question. And do you feel—and I think we all feel that we want clean water, we want clean air. Is there a cost-benefit analysis that you feel comfortable that the investments to comply or decision to shut down will actually increase public health in your area? Have you gotten records from the Colorado Department of Health that will show that there has been x number of cases of elevated mercury in people in an area of one of your coal fire plants, for example?

Ms. WALZ. The cost-benefit analysis that we have seen is actually the most recent one, and the rule that was finalized today is the Utility MACT Rule. And that cost-benefit analysis, really it is a mercury rule. It is a hazardous air pollutant rule and the benefits that EPA estimates for mercury reduction is about \$6 million. However, they go on to calculate and include economic benefit for reduction of particulate matter and estimate that I believe the number is 90—

Mr. TERRY. OK. I would love to come back and do this but I have got to ask Dr. Mitchell.

Did you treat patients?

Mr. MITCHELL. Yes, I have.

Mr. TERRY. Do you take a history from them?

Mr. MITCHELL. Yes, when I—

Mr. TERRY. When you obtain a history, do you call them a complainer?

Mr. MITCHELL. No, we were asking them—

Mr. TERRY. Oh, well, then why do you call these four people a complainer because they set out some issues that affect their business just like a patient would to you?

My time is done.

Ms. DEGETTE. Wait a minute. Let him answer the question. I ask unanimous consent to let Dr. Mitchell answer the question.

Mr. TERRY. He answered the question. I asked him if he takes a history and whether he calls them a complainer. He said no.

Ms. DEGETTE. You asked, why did he complain about the other four witnesses? Let him answer the question.

Mr. STEARNS. I think in all fairness, Dr. Mitchell, do you want to take 15 seconds just to—

Mr. MITCHELL. Yes.

Mr. STEARNS. Go ahead.

Mr. MITCHELL. Thank you.

I did not say that the other businesses are complainers and obviously there needs to be a balance—

Mr. STEARNS. OK.

Mr. MITCHELL [continuing]. And they have issues and—

Mr. TERRY. All right, now, may I?

Mr. STEARNS. OK, 15 seconds.

Mr. TERRY. OK, thank you.

But you did state in your opening statement that when you were in a position to hear people talk about regulations that they were just complaining. Now, I would from that statement—

Mr. STEARNS. Dr. Mitchell, he really has the time so I mean you have had your chance to—

Mr. TERRY. Just to state that your opening statement, you said people who—

Mr. STEARNS. I think—

Mr. TERRY [continuing]. Question regulations you viewed as just complaining and so—

Mr. STEARNS. OK, we are going to conclude this. We can go back and forth here for an hour.

And we are going to let Mr. Waxman move on. He will—

Mr. WAXMAN. I ask unanimous consent not that we give more time to the gentleman from Nebraska but give time to our witnesses, 30 seconds to say what he wants to say.

Mr. STEARNS. Does anybody object to the unanimous consent? Go ahead, 30 seconds.

Mr. MITCHELL. What I was saying in my opening remarks is that the only people I was hearing from about regulations was the regulated community, that the public thought that the government was going to protect them and that they didn't need to communicate with government about regulations.

Mr. STEARNS. Thank you, Dr. Mitchell.

We recognize Mr. Waxman, 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Three years ago, Dr. Patrick Michaels testified before the Energy and Environment Subcommittee that widely accepted scientific data has overestimated global warming and that regulation enacted in response to that data could have a very counterproductive effect. In the CV he provided the committee, he provided what appeared to be a comprehensive list of all of his financial support, over \$10,000. After the hearing, we learned that Dr. Michaels had omitted information about his advocacy group called New Hope, which apparently attempts to rebut the prevailing consensus on climate change science. Further, Dr. Michaels did not disclose finan-

cial support he received for New Hope from energy sector supporters, including Tri-State Generation and Transmission. When Representative Welch, then a member of this committee, asked Dr. Michaels to clarify the record, he failed to give a clear answer. It is important that we learn about his discrepancy and find out if Dr. Michaels was misrepresenting himself as an unbiased researcher if in fact he was receiving significant support from energy companies and polluting industries for advocacy work.

On Tuesday, I sent a letter to Ms. Walz asking her to come prepared to answer questions about any past or current arrangements Tri-State has or had with Dr. Michaels, New Hope, and any other affiliated organization. Ms. Walz, according to an affidavit Dr. Michaels filed in Federal court, Tri-State provided Dr. Michaels' advocacy group \$50,000 in 2006 to work on climate science issues. That is correct, isn't it?

Ms. WALZ. Congressman Waxman, I received your request late Monday in the day. I was in a meeting but needed to leave the office quick, but what I did is actually Googled Dr. Michaels because I had never heard of him and I wasn't quite sure what the relevance to my testimony was here today.

Mr. WAXMAN. Well, my question is about your company. I want to know whether Tri-State funded Dr. Michaels, his advocacy firm, or affiliated organizations before or after 2006 to work on climate science issues. Can you detail this funding history for the committee?

Ms. WALZ. Based on the timing of your request, I have not had time to research this and bring forward information.

Mr. WAXMAN. Will you get us that information for the record?

Ms. WALZ. We are looking at your request and we will bring a response to you as appropriate.

Mr. WAXMAN. Dr. Michaels' affidavit also states that Tri-State "requested that its support of \$50,000 be held confidential." Do you know why Tri-State requested that its funding effort be held confidential?

Ms. WALZ. I had no personal knowledge of Dr. Michaels or any work he had done with Tri-State.

Mr. WAXMAN. Tri-State is an electric cooperative. It is not an organization that typically funds climate change science research. Is it—

Mr. GARDNER. Will the gentleman yield?

Mr. WAXMAN. No. I want to pursue my questions.

Mr. GARDNER. Will the gentleman yield? I would like to know why—

Mr. WAXMAN. No, the gentleman's time—I am asking my questions.

Mr. STEARNS. The gentleman has the time. I would caution the gentleman that—

Mr. WAXMAN. Mr. Chairman, point of order. My time is running out and I don't want to be cautioned and I don't want to be interrupted. Ms. Walz—

Mr. STEARNS. Well, you have the time.

Mr. GARDNER. I will remember that the next time you ask somebody to yield.

Mr. WAXMAN. I ask unanimous consent I be given additional minutes so I can——

Mr. STEARNS. No, you go ahead. We will give you an extra——

Mr. WAXMAN. Does the gentleman object? Are you the one that asked me to yield?

Mr. STEARNS. The gentleman has the time. Use your time as your time is running.

Mr. WAXMAN. Now, Tri-State is an electric cooperative. It is not an organization that typically funds climate change science research, is it?

Ms. WALZ. Tri-State funds——

Mr. WAXMAN. Yes or no?

Ms. WALZ [continuing]. R&D for carbon management and carbon policies.

Mr. WAXMAN. Are there other climate scientists—well, these are things I want you to get to us. Are there other climate scientists that Tri-State funds? Can you provide information about any such activities for the committee? Ms. Walz, \$50,000 is a lot of your members' money. What could Tri-State hope to get in return? I want answers to that. I think it is pertinent to the integrity of the testimony we get before the Congress.

Your members might be surprised to learn that their money was used to fund an advocacy firm to downplay the significance of climate change. When witnesses come before the committee, they should speak honestly and not mislead the Congress about their intentions or supporters. Ms. Walz, your information will help us to determine whether that was accurate or not.

This is not the only incidents of this committee receiving questionable testimony. TransCanada recently testified that the steel to be used in the Keystone XL pipeline would be manufactured at an American steel mill. It turns out that is not the case. Given the information, it is imperative this committee ensure that it is receiving accurate testimony. I think that should be of interest to members on both sides of the aisle. A good place to start would be to further examine Dr. Michaels' conduct and determine if he provided false or misleading information to the committee.

And I would like to yield to whoever was asking me to yield.

Mr. STEARNS. Mr. Gardner, do you want to take a little opportunity here?

Mr. GARDNER. I believe the gentleman's time has expired.

Mr. STEARNS. The gentleman's time has expired. We recognize Mr. Sullivan for 5 minutes.

Mr. SULLIVAN. Thank you, Mr. Chairman.

I have a question for Mr. Shoop. In your testimony you indicated that OG&E's current capitalization is 5.5 billion and its annual operating revenue is 3.9 billion and that to purchase the scrubbers that EPA's Regional Haze Federal Implementation Plan would require would cost an additional 1 billion or more. Do I understand your testimony correctly in saying that you don't want to commit to that 1 billion or more for scrubbers because other cheaper alternatives to attain the Regional Haze objectives exist and because you want to first know whether or not other EPA regulations such as Utility MACT are either going to compel the investments in scrubbers or other alternatives? And if so, do I understand that you

are really saying that for a utility your size, it is imperative to be able to determine a comprehensive strategy for complying with all EPA regulations in order to invest efficiently and not wastefully? Do you think that EPA's decision to issue a Federal Implementation Plan to Oklahoma for Regional Haze is reflective of the executive order's directive to adopt the most cost-effective approach to attainment of environmental objectives?

Mr. SHOOP. Well, thank you. And, you know, a billion dollars for OG&E is a lot of money and that is just the capital end of things. There is also annual O&M which is going to be north of \$100 million every year to go along with those scrubbers. So it is a lot of dollars and we would like time to investigate alternatives. We are looking and studying dry sorbent injection technology, which is largely untested. There are a lot of things that we need to check, we need to run tests, and it could be that that is a much cheaper alternative than the scrubbers, but we need time to test it and the clock is running on not only Regional Haze but also these other rules as well.

So I think that the EPA, if they were to combine some of these rules instead of keeping them in silos and allow us to address them holistically, I think we can achieve compliance probably in a much more cost-effective way.

Mr. SULLIVAN. Also in your testimony you mention that the EPA decided to include Oklahoma in the Cross-State Air Pollution Rule. Based on computer modeling that suggested that the Oklahoma utilities emissions were threatening to place a county in Michigan in noncompliance with ambient air standards, prior to this revelation by EPA, did the Agency ever make such a claim of Oklahoma's emission impact with any Michigan county?

Mr. SHOOP. You know, originally, Oklahoma was studied and it was determined that Oklahoma was impacting Texas. And then in the final rule that came out with CSAPR, Oklahoma was omitted from that final rule and they came out with a supplemental rule and changed their mind and said that Oklahoma was now impacting a county in Michigan, which currently is in attainment by the way. So we have got serious concerns about that model and we have got serious concerns about the science behind it. It is just illogical to us that we could be impacting that lone county and nothing in between. So we really have some serious concerns. We filed comments with the EPA on those modeling assumptions and we hope that we get some more answers.

Mr. SULLIVAN. It would be funny if it weren't so serious, wouldn't it?

Mr. SHOOP. Yes.

Mr. SULLIVAN. Thank you.

Mr. STEARNS. The gentleman yields back the balance of his time. And Dr. Burgess is recognized for 5 minutes.

Mr. BURGESS. Thank you, Mr. Chairman.

Mr. Puzder, I really appreciate the interactions you had with Ms. DeGette about the board being required in the restaurants. My pizza restaurant in Lewisville, Texas, a Domino's, is generally just walk-in business or carryout or delivery and they are going to be required to put one of these big boards up. As you mentioned, there is some expense involved. All of the information is available online.

I can get the information should I so choose. I generally don't but to have it up on the board in the restaurant when, in fact, most of it is carryout business or delivery really makes no sense. So people should go online and check the individual nutritional information, though I promise you I have never done it myself.

Dr. Mitchell, I appreciate you being here, appreciate what your organization has meant over the years. Mr. Chairman, if I could correct my colleague, when we take a history, the first paragraph is the HPI, history of present illness, correct?

Mr. MITCHELL. That is correct.

Mr. BURGESS. And the line preceding that is CC or chief complaint. That is we elicit a complaint from a patient and then we try to help them unlike lawyers who just never try to help anybody. OK, that being aside—

Mr. MITCHELL. I will not comment on that.

Mr. BURGESS. You know, we had Mr. Waxman talk about the Truth-in-Testimony and he made a pretty genuine plea for that. So let me just ask you on the second page of your testimony you talk about diethylstilbestrol.

Mr. MITCHELL. Yes.

Mr. BURGESS. I am not sure, though, that what you have got in your testimony is entirely accurate because diethylstilbestrol was approved by the Food and Drug Administration in 1947 for the treatment of habitual miscarriage. I am an ob-gyn physician by training. I trained in the 1970s so of course we were the recipients of the problems visited upon the children of women who had taken diethylstilbestrol, and in fact in the 1970s, the Food and Drug Administration rescinded its approval for treatment of preterm labor. I think it was 1971. Diethylstilbestrol, interestingly, persisted in medical practice. In fact, in the early '70s up until about 1975 or 1977 was widely used as post-coital contraceptives. Now, no one of this committee remembers that. We are all familiar with Plan B and the attempts to make that go over-the-counter in the market, and people ask me how can you oppose this because this is something that is helpful for patients and helpful for women?

But I do remember the days when diethylstilbestrol was routinely prescribed for that and in fact harmed pregnancies that then continued after the regimen of post-coital contraception was given. And in fact I don't know that it ever worked that effectively. So I would like at some point for you—I give you the opportunity to correct your testimony. I think it is thalidomide to which you refer but diethylstilbestrol in fact was approved by the Food and Drug Administration actually for several indications over the 50 years of its existence and may even still be available today for prostate cancer. I am not entirely certain about that because that was not my field of practice.

Now, you also deal with environmental issues as affecting particularly the constituency that you represent, the National Medical Association minority populations, low-income populations. I share some of your concerns but I got to tell you the Environmental Protection Agency, right now the number one problem that your asthmatic patients have today is because of the Environmental Protection Agency, and that is the prevention of the sale of an over-the-counter rescue inhaler. Primatene was the common name for that.

But because of the EPA restrictions on the propellant used in Primatene, no one can get it as of January 1. In fact I spent New Year's Eve driving around my district not listening to constituents but actually trying to buy the last remaining copies of Primatene that were available on the shelves because it would not be available. Now, Primatene is pretty low cost. In fact I learned a lot that night. You can get a package of two for \$32 at most Wal-Marts—or you could. I also have a prescription inhaler that has the different propellant that is now allowed but it is about three or four times the cost of that Primatene inhaler.

So your low-income patients who are asthmatics who might have difficulty obtaining their medications for whatever reason actually relied upon the use of over-the-counter Primatene. And of course some of us who are occasional asthmatics who will wake up at two o'clock in the morning, oh, my gosh, I got a problem. You know, I am doctor. I can write my own prescription so it is not a problem for me, but a lot of your patients or a lot of your constituents then are required to either suffer through that night trying to use the accessory muscles of breathing and being pretty miserable or if they are really in trouble they go the emergency room and it costs someone \$800 to \$1,500.

I really appreciate Mr. Puzder's comments about, you know, things aren't free. And I hear the President talk about we are going to have free contraception and free screening exams. Someone is going to pay for those. But I just wondered if you had a comment about the unavailability of the over-the-counter asthma medications and again the fault of that being the EPA. And I really want to solicit your help with Administrator Jackson and Gina McCarthy, the Assistant Administrator who has come to this committee who seemed at a loss as to how to deal with this.

Mr. MITCHELL. Yes. I think that Primatene was pulled for a couple of reasons. That was one of them, because of propellant; the other is because of concern I think by the physicians particularly around cardiac problems with Primatene; and a third reason is that they felt that patients with asthma should be getting medical attention rather than using over-the-counter—

Mr. BURGESS. Dr. Mitchell, if I may, you are a doctor. I mean does everyone always follow your advice to the letter? They never did for me. I would like to know your secret.

Mr. MITCHELL. I wish it were true that they did. I understand what you are saying and your point is good but the issue is that they shouldn't even have to do that. We know that ozone increases the amount of asthma attacks. We know that particulates increase the amount of asthma attacks—

Mr. BURGESS. I know my time has expired. I have been an asthmatic since the 1950s and I submit to you the environmental situation was different in those days. I still had the disease.

So Mr. Chairman, with that, let me yield back to the committee.

Mr. STEARNS. The gentleman's time has expired.

Mr. Bilbray from California is recognized for 5 minutes.

Mr. BILBRAY. Thank you, Mr. Chairman. Mr. Chairman, let me apologize to the committee because, you know, this sort of just brings me back to the good old days of the '80s and I was sitting as a regulator for a county of 3 million and we had the fetal alcohol

syndrome issue, and the whole discussion at that time was that it was a major threat to the unborn and that we needed to address it. And the proposal came forward that we should require every restaurant to have on its menus the warning, every restaurant on its table posted, every bar on every table down to the point of requiring that every chair in a stadium where alcohol was sold had to have on the back of it a warning about fetal alcohol syndrome. And the perception was—and Doctor, I will bring this up—was that if we did not implement these rules, we were going to damn generations to this terrible problem and that if we really cared we have to do this. I was just in my 30s at that time and sitting as a county supervisor, and frankly, I said look, guys, in a bar there is only one place anybody reads anything and that is the back of the restroom door. And everybody laughed. How many years later, where do we put our warnings for fetal alcohol syndrome? Does that mean that we don't care about the issue that we didn't post it everywhere, anywhere that was originally proposed?

And the reason why I bring this up, Mr. Chairman, just because you care isn't enough. When we do regulations, we have got to not only care but we have got to be smart the way we apply it. Wouldn't you agree with that, Dr. Mitchell?

Mr. MITCHELL. Yes, I would.

Mr. BILBRAY. OK. Well, let me give you an example. We keep talking about stationary sources here and coming from California don't you agree that one of the dirty little secrets is that mobile sources are a major contributor to ozone and air pollution and greenhouse gas problems?

Mr. MITCHELL. Ozone, yes, transportation and mobile sources are in addition to the stationary sources.

Mr. BILBRAY. OK. All the time, Mr. Chairman, that we hear about—is there anybody here from a non-attainment area? OK. Now, you know, Doctor, that if you allow one industry to pollute under a non-attainment area, that means somebody else has to reduce it to stay within the air bubble of the attainment area. I keep hearing all this talk of what businesses and small businesses have to do, but at the same time I am seeing that, this committee who claims and a lot of people who claim to care about these air pollution issues ignore studies come out of Florida and Kansas that show that 22 percent of the emissions coming out of mobile sources can be tracked to inappropriate traffic control, not by the private sector that creates the jobs but by the public sector that puts up stop signs because yield signs don't work, don't want to use roundabouts, don't want to synchronize traffic signals.

Now, Doctor, don't you think that it is rather a little hypocritical of us to say we care about jobs and we care about the environment but we focus almost exclusively on the private sector but never look at the public sector's responsibility to do more than just mandate on the private sector? Don't you think that maybe we ought to spend as much time worrying about what is government doing wrong—and I will be blunt with you—mandating things like MTB and ethanol and some of these other issues, doing the things we have done wrong, don't you think it is time that maybe if we really care about the environment and public health, government will do

us—a physician would say heal thyself before you start pointing fingers? And I would yield to you to respond to that.

Mr. MITCHELL. Yes, I mean I think that it is important that we look at all the policy and particularly obviously you as a Congress have a lot of responsibility for that. It is clear that you don't reduce some pollution from mobile sources by widening the roads or those types of things, that you have got to invest in transit. That seems to be—

Mr. BILBRAY. Whoa, let me interrupt. First of all, I am sorry. I have done enough environmental assessments to know that the no-project options do have environmental repercussions, that not widening a road does have environmental—so Doctor, when you say that, I ran a transit system, too, and I understand the benefit there. But I think that too often you have just moved over a line that does not reflect the reality of science. And again let me just say there is a flip side, too, and I will say this to you. The Clean Water Act was brought up by the ranking member and we have got the Scripps Institution of Oceanography and the National Academy of Science saying that for the Federal Government to mandate the secondary mandate in the San Diego region would be adverse to the environment, not help the environment. And it has taken decades for people to understand that. Do you understand that sometimes environmental laws actually create problems rather than solve them? Would you agree with that, Doctor?

Mr. MITCHELL. That does occur sometimes, yes.

Mr. BILBRAY. Because they are not appropriately administered. I guess everything down the line here is there is an assumption that common sense and practical application like putting a warning on the back of a bathroom door rather than requiring it on the back of every seat in the stadium is the kind of thing the American people expect us to do and rightfully should do. And all I can say is if we want the right to mandate stuff on these people, we not only have a legal I think we have a moral obligation to make sure those regulations are based in common sense, not just good intention.

And I yield back, Mr. Chairman.

Mr. BURGESS [presiding]. I thank the gentleman.

The gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Mr. Chairman, I don't know how to follow putting signs on the back of the bathroom door, but I think I agree with my colleague because sometimes regulations do have a benefit. And I know for lots of businesses regulations cost too much and they put pressure on earnings and discourage investment and innovation. And when my colleague from California asked about a non-attainment area, I represent East Harris County and we have 5 refineries and 20-plus chemical plants literally in my own district plus other ones in a neighboring area. We have refineries, chemical plants, and lots of industry support personnel for that industry and for the oil and gas industry. Regulations are critical for our workers for their safety, health in our communities who I represent the fence line folks, too. And it is true that I don't always agree with the regulations of this administration, but I have had problems with past administrations, too, whether they were Republican or Democrat, on their regulations.

And I know with talking with the constituents that the public cares a great deal about benefits that come from good regulations and I will give you an example. The Clean Air Act, in the Houston Ship Channel, when I was in college in the '60s you could actually light the water in the Houston Ship Channel. And nowadays, our plants for the last 15 years is on their intake of water has been actually getting live fish and crabs. We still don't want to eat those crabs and fish but they are alive and in 1960 they weren't. And so there are benefits.

Now, there is a reason when there are some regulations whether Clean Water or Clean Air, and sometimes we have a problem. And I know I have disagreements on probably a dozen issues with the EPA during this recently in the last year and a half or 2 years, but sometimes they are good issues.

Mr. Shoop, you and I have worked and shared a great concern over clean air regulations and I have to admit Texas is kind of like Oklahoma. We don't have to have an interpreter to talk to each other. My only complaint is Oklahoma takes too many of our football players. But we have worked together on a resolution and I value that effort that we have done. And that has typically been on a bipartisan basis on our committee. And I know how important it is to balance regulations with health and safety and our economic interest because we would not have those 5 refineries and those 20-plus chemical plants providing our job and our tax base without some reasonableness to the oversight and the regulations.

And I know we are looking at the benefits of regulation and also what the President did and I appreciate your testimony on Executive Order 13563, but one of the benefits I know of your particular company and it has benefitted a lot of my companies is the Affordable Care Act. I know the Affordable Care Act provided assistance to Oklahoma Gas and Electric like it did some of my companies with retiree benefits. So that would be an example—I know this may be sacrilege in this committee because we tried to repeal it, we tried to do everything else with it, but were there benefits that Oklahoma Gas and Electric received from the Affordable Care Act Early Retirement Reinsurance Program?

Mr. SHOOP. I am actually not aware of that benefit, but if we received it, I am sure it was appreciated. But I have no knowledge of that.

Mr. GREEN. OK. Well, you might check because I understand you received about \$700,000 for the program and believe me, that helps some of my, you know, constituents in our district.

Mr. Williams and Dr. Mitchell, do you have anything to add to some of the benefits important on regulations on individuals and companies?

Mr. MITCHELL. Yes. I mean obviously companies rely on having a healthy workforce. If the workforce is not healthy, then it is going to be very, very costly to the companies both in healthcare costs as well as training for new employees. And so I think that is it really important for business to maintain a healthy workforce.

Mr. GREEN. Mr. Williams, anything to add?

Mr. WILLIAMS. Yes, I would reiterate that we have grown our business, we have hired people, we have invested capital because good business sense, market research says that that is a good thing

to do. We know regulation costs money. We know that there is pending regulation that may be threatening but that does not stop the opportunity for growth and investment. The broad uncertainty of our economy and of our debt is the largest inhibitor and the key point that gives us cause for concern when we step back and ask ourselves the questions associated with return on investment. Ultimately, it is the business case that allows us to move forward and it is that business case that has allowed us to continue to grow.

Mr. GREEN. Well, Mr. Chairman, I know I am out of time. There is a reason for the regulation. I have, like I said, an area that is a heavy industrial. I love to hunt and fish; I just don't want to have to do it to support my family. I would rather have my folks working at those plants. Thank you.

Mr. STEARNS. The gentleman's time has expired.

Recognize Dr. Gingrey from Georgia for 5 minutes for questions.

Mr. GINGREY. Mr. Chairman, I thank you.

I want to address my first remarks to Mr. Williams. Mr. Williams, I have before me your written testimony but I thought I heard you say—you correct me if I am wrong—you are unabashed conservative Republican—

Mr. WILLIAMS. Unrepentant.

Mr. GINGREY. Unrepentant conservative Republican?

Mr. WILLIAMS. Yes, I am.

Mr. GINGREY. Does that mean you still consider yourself a conservative Republican?

Mr. WILLIAMS. Absolutely.

Mr. GINGREY. Thank you. I thought that is what I heard you say. A little surprised that the minority staff would have your name in their rolodex to call you as a minority witness. Can you explain that to us?

Mr. WILLIAMS. I had the opportunity to testify—we had the opportunity to talk at a prior hearing regarding TSCA reform and my understanding is that it was on the basis of that discussion—

Mr. GINGREY. They liked what you had to say at that particular time?

Mr. WILLIAMS. Apparently so.

Mr. GINGREY. Apparently so. Yes. Now, in your written testimony—I am looking, Mr. Williams, on the second page, back of the first page I guess—and you say, “increasingly, the cause of cancer and diseases such as autism, Parkinson's, and other illnesses are being linked to chemicals of concern and yet we struggle to reform decades-old legislation.” In regard to autism, can I ask you this? Are you thinking of or referring to this controversial issue about mercury and the preservatives of childhood vaccines? Is that what you are thinking?

Mr. WILLIAMS. I am not an expert in that area. We have done a fair amount of research to try to understand the market demand for materials made with safer chemicals, and in that research, reading publications by Safer Chemicals and Healthy Families, by the Autism Association that is a part of Safer Chemicals and Healthy Families. It is from that.

Mr. GINGREY. Yes. So in regard to that, about struggling to reform legislation, do you have any legislation particularly in mind in regard to that entity? Autism and mercury and the preserva-

tives, which is my understanding of course it has been removed, but what kind of legislation did you have in mind in regard to that?

Mr. WILLIAMS. Regarding the TSCA reform legislation.

Mr. GINGREY. Well, I was specifically referring to——

Mr. WILLIAMS. Autism?

Mr. GINGREY. Autism, yes.

Mr. WILLIAMS. I have none particularly in mind.

Mr. GINGREY. OK. Well, thank you, Mr. Williams. Let me——

Mr. MITCHELL. Can you give me a chance to answer that question?

Mr. GINGREY. Dr. Mitchell, I am coming right to you.

Mr. MITCHELL. OK.

Mr. GINGREY. And you can answer that in addition to my other questions, but I would like for you to answer my other questions first. I am reading your testimony and in regard to the issue of diethylstilbestrol, DES—and hold on just a second; let me ask the question and then you can respond—and here is what you say: “I am also aware about products like diethylstilbestrol, or DES, that were not approved by the FDA and went on to cause major disabilities in other countries where it was approved for use.” Now, that is your statement. And you go on to say that “generations of Americans were protected by FDA’s prevention of this drug from coming to market in the United States.” Doctor, are you aware of the fact—obviously, you are not aware of the fact that the FDA first approved DES in this country in 1941.

Mr. MITCHELL. There was an error in my testimony.

Mr. GINGREY. There obviously is an error in your testimony and, look, we all are subject to making errors and I think the chairman, Dr. Burgess, has given you the opportunity to revise and extend your testimony, but you know, the thing that really bothers me about all this is the first paragraph on the second page of your testimony—and you say, “I was previously on a U.S. Food and Drug Administration advisory panel.” You were an advisory expert for the FDA and you didn’t even know that they had approved DES for use in this country in 1941.

Mr. MITCHELL. I mean thalidomide.

Mr. GINGREY. Well, obviously and I can understand. I appreciate your answer but it is a little bit disturbing, Mr. Chairman, when witnesses are called before this committee as so-called “experts” whether for the majority or the minority and, you know, something like that, a mistake like that makes me feel that the whole testimony from Dr. Mitchell is worthless. And, you know, if the other side wants to talk about that and ask Dr. Mitchell to explain in more detail, they will have an opportunity to do that.

And I yield back.

Mr. BURGESS. The gentleman’s time has expired. Recognize the gentleman from Colorado for 5 minutes for purpose of questions.

Mr. GARDNER. I thank the chairman for the time and I thank the witnesses for testifying today. And I would just, Mr. Chairman, ask that perhaps we can get some clarification from Mr. Waxman that Ms. Walz’s testimony wasn’t anything but truthful. I think it may have come across as he was impugning the witness here and I don’t

believe that that was what he was trying to do but I would just like to perhaps get that clarification from Mr. Waxman.

And along those same lines of questions, I have served on this committee for about a year now, a little over a year now and have been to many, many hearings where the issue one thing, the issue is jobs, as is the case here the issue is regulations, as the issue is here and my colleague will go a different direction than the purpose of the hearing. In fact it is not the first time that a red herring has been used by my colleague. In fact so many have been used that perhaps they ought to be an endangered species.

But I would like to talk a little bit, Ms. Walz, about some of your testimony and specifically the Regional Haze issue. In your testimony you note that Colorado's Regional Haze SIP has cross-spectrum support and bipartisan support. Can you explain this collaborative approach?

Ms. WALZ. Yes. When we went through the state hearing to put the rule in place, the environmental community was represented and a number of environmental organizations as well as utilities and the State, and we came up with a negotiated agreement that all parties agreed to and said this is the best way to go; this is good for Colorado; this is reasonable progress.

Mr. GARDNER. And thank you. And I would like to submit for the record letters from Governor Hickenlooper and Senator Udall, Senator Bennet, as well as the Colorado Congressional Delegation, the Speaker of the House in support of Colorado's SIP for the record, if I could, Mr. Chairman.

Mr. BURGESS. So ordered.
[The information follows:]

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

November 02, 2011

The Honorable Lisa P. Jackson
Office of the Administrator
Environmental Protection Agency
Room 3000, Ariel Rios Building
1200 Pennsylvania Ave. NW
Washington, DC. 20004

Dear Administrator Jackson:

Earlier this year the State of Colorado submitted to EPA an air quality plan to the Environmental Protection Agency on behalf of the State of Colorado. That plan, entitled "Colorado Visibility and Regional Haze State Implementation Plan for Twelve Mandatory Class I Federal Areas in Colorado" ("Regional Haze SIP"), is currently pending before EPA. I am writing to encourage EPA to approve the Regional Haze SIP and promote a cleaner environment and better economy for the state of Colorado.

The Regional Haze SIP is the culmination of years of effort by the State of Colorado. It has been subject to review by the Colorado Department of Public Health and Environment, the Colorado Public Utilities Commission and the General Assembly. CDPHE prepared the Regional Haze SIP only after assuring that it had a strong technical foundation and only after receiving voluminous input from industry, the environmental community and other stakeholders, including EPA itself.

Consistent with the Clean Air Act, the Regional Haze SIP represents a robust, carefully balanced solution to the problem of visibility impairment. Under the SIP, emissions from coal-fired electric generating units and other industrial sources will decline dramatically. These unprecedented emission reductions will enhance the vistas in our treasured natural parks and wilderness areas and will result in healthier air for all Coloradans. Moreover, the Regional SIP achieves these emission reductions at reasonable cost, protecting our state's economy while enhancing our environment. It provides certainty and flexibility to our state's industries while cleaning up the air.

For these reasons, I urge your approval the Colorado Regional Haze SIP.

Sincerely,

John W. Hickenlooper
Governor

Congress of the United States
Washington, DC 20515

December 16, 2011

The Honorable Lisa P. Jackson
 Office of the Administrator
 Environmental Protection Agency
 Room 3000, Ariel Rios Building
 1200 Pennsylvania Ave. NW
 Washington, DC. 20004

Dear Administrator Jackson:

Earlier this year, Colorado Governor John Hickenlooper submitted a State Implementation Plan (SIP) to EPA to reduce regional haze pollution in existing Class I areas in Colorado. The SIP has been reviewed and endorsed by the state's electric utilities, conservation organizations, the bipartisan state legislature, the governor, the Colorado Air Quality Control Commission, and the Colorado Public Utilities Commission. We ask that you give strong consideration to approving the plan as a whole so Colorado can continue its record of environmental and economic progress.

The SIP submitted earlier this year is designed to significantly reduce harmful emissions of sulfur dioxide, nitrogen oxide and other pollutants in Class I areas in Colorado under the requirements of the Clean Air Act's Regional Haze program. Having been subject to state-administered environmental and economic assessments, the plan will address visibility concerns in treasured national park and wilderness areas that are at the heart of Colorado's tourism and recreation industries, as well as quality of life.

In working to achieve these important goals, Colorado followed an exemplary and inclusive stakeholder approach that has earned Colorado's proposal broad support within the state. The Colorado Air Quality Control Commission conducted several public hearings to collect input from both public and private sector partners. The hearings included participation from relevant state government agencies, regional utilities, and organizations focused on resource protection. The Colorado Public Utilities Commission reviewed and approved many of the emissions reductions included in the SIP. The SIP also received broad, bipartisan support in both houses of the state legislature, something that speaks to its balanced and thoughtful approach to reducing harmful pollution.

Colorado's proposed SIP is an aggressive and achievable plan for pollution reduction. We urge you to give it full and prompt consideration for approval so that the people of Colorado can realize its benefits as soon as possible.

Thank you for your attention to this matter, and please do not hesitate to contact our offices with any questions.

Sincerely,



Mark Udall
 U.S. Senator



Michael F. Bennet
 U.S. Senator



Diana DeGette
U.S. Representative



Doug Lamborn
U.S. Representative




Ed Perlmutter
U.S. Representative



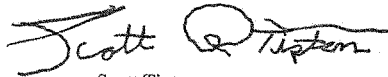
Mike Coffman
U.S. Representative



Jared Polis
U.S. Representative



Cory Gardner
U.S. Representative



Scott Tipton
U.S. Representative

State Representative
FRANK McNULTY
P.O. Box 630573
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District: 303-683-8873



SPEAKER OF THE HOUSE

Vice-Chairman:
Executive Committee of
Legislative Council
Legislative Council Committee

COLORADO
HOUSE OF REPRESENTATIVES
STATE CAPITOL
DENVER
80203

October 31, 2011

James B. Martin
Regional Administrator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202

RE: EPA Approval of Colorado Regional Haze State Implementation Plan

Dear Administrator Martin:

I write to request your prompt and full approval of Colorado's Regional Haze State Implementation Plan (SIP).

The Colorado General Assembly in 2011 passed House Bill 1291 that I sponsored to approve the SIP revision that was unanimously adopted by the Colorado Air Quality Control Commission to address the requirements of the federal Regional Haze Rule. The SIP is a notable achievement in that it collected the support from all parties involved in the Air Quality Control Commission's rulemaking hearing; agency, industry and environmental groups were united in their support. The State of Colorado fulfilled its responsibility to respond to the federal Regional Haze Rule by analyzing and selecting the emission controls that fully address the requirements of the Regional Haze Rule and provide the best state-specific solutions for Colorado in a reasonable and balanced fashion. Colorado industry, which is now subject to these requirements to reduce air emissions at a cost in excess of \$1 billion, is poised to begin implementing these requirements, but waits for EPA approval of Colorado's SIP before it can proceed with certainty.

Following the federal requirements, Colorado's SIP makes prudent determinations of Best Available Retrofit Technology (BART) and "Better-than-BART" alternatives to assure greater emissions reductions than would otherwise be achieved through meeting the minimum requirements of the federal program. The SIP also creates appropriate requirements to ensure that progress is made toward achieving "Reasonable Progress Goals" for protecting visibility in a dozen scenic areas across Colorado. Implementation of these many measures to improve visibility is linked to the date on which EPA approves the SIP. An earlier approval will help to reduce uncertainty in federal regulatory actions and lead more quickly to emission reductions and visibility protection benefits.

James B. Martin
October 31, 2011
Page 2

In April 2011, the Colorado Department of Public Health and Environment sent to EPA the *Colorado Visibility and Regional Haze State Implementation Plan for the Twelve Mandatory Class I Federal Areas in Colorado*. While a consent decree requires that EPA propose action by March 8, 2012 and take final action by September 12, 2012, on behalf of the citizens of Colorado, including the parties involved in the collaborative creation of the SIP, I strongly urge you to promptly and fully approve the Colorado Regional Haze State Implementation Plan.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Frank McNulty', written over a horizontal line.

Frank McNulty
Speaker of the House
Colorado General Assembly

Mr. GARDNER. And would you please explain to me Tri-State, what did you agree to do in your SIP?

Ms. WALZ. We agreed to put on control technologies at the Craig Station, to install a selective catalytic reduction on one of the units, and then to lower our emissions on the other two. Its implementation, it is a \$330 million investment in controls.

Mr. GARDNER. And that investment as you said was, you know, you are a not-for-profit operation, so that investment will be in turn paid for by your members?

Ms. WALZ. Correct. That is true.

Mr. GARDNER. And in your testimony you had stated several different things including EPA requirements that may require—so talking about the cost of various regulations and the EPA has estimated that the benefits of the Utility MACT rule is 6 million annually and you had stated that unfortunately the cost of compliance is estimated to be \$9 billion annually. Do you know roughly how much of that will be the cost that Tri-State will bear?

Ms. WALZ. On the Utility MACT side, we are in the process of analyzing cost to existing units. We don't have those estimates completed, but again the major impact to us is on building the new coal unit that we have an air permit for. It will stop construction of that.

Mr. GARDNER. And again, that is a plant that will not go forward, correct, at this point?

Ms. WALZ. Correct. Yes, we don't have vendors that will give us guarantees that they can meet the new standard, and without that, you don't have agencies that will give you financing to build. And then you risk building and not being able to comply from day one.

Mr. GARDNER. And what would happen if you had to install three SCRs which remove nitrogen oxide at the Tri-State Craig facility?

Ms. WALZ. If we are required to install three SCRs, which is a real concern that we have because that is what EPA's action is taking in other States, it would be about \$1 billion.

Mr. GARDNER. And \$1 billion would be borne by your 44 member cooperatives?

Ms. WALZ. Yes, it would.

Mr. GARDNER. Thank you.

And then, Mr. Puzder, a couple of questions for you on restaurants. What kind of nutritional disclosures does the company currently provide you mentioned in your testimony?

Mr. PUZDER. Yes, we disclose on large posters in the restaurants. I have got the list here—serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fiber, sugars, and proteins. And—

Mr. GARDNER. And I—

Mr. PUZDER [continuing]. It is in a poster that is framed and this large in the restaurant.

Mr. GARDNER. And that is displayed in the restaurant. And as your testimony and previous questions answered, does the government require you to disclose this information?

Mr. PUZDER. No, we do it in every restaurant we have in the United States. We are not required to do it. We did it when I was

Carl Karcher's lawyer back in the early '90s. I mean it is just a tradition of the company.

Mr. GARDNER. And you are offering healthy menu selections as well?

Mr. PUZDER. We have turkey burgers, we have the skinless, all-muscle chicken sandwiches, we have salads, we have honey whole wheat buns. We have a lot of health products.

Mr. GARDNER. And the government didn't mandate you to do that?

Mr. PUZDER. No, we have got them and I am very happy if people buy them.

Mr. GARDNER. And then you talked a little bit about healthcare and the fact that healthcare cost estimates vary so widely. How are you able to even budget for new restaurant construction?

Mr. PUZDER. Well, you really can't. It is one of the reasons construction has gone down in the past couple of years. As a matter of fact, our franchisees are building less restaurants. This will be the first year in the history of the company which goes back to 1941 that our franchisees outside the United States will build more restaurants than our franchisees in the United States. We will do about 41 restaurants last year inside the United States and about 72 outside the United States. So it has become a very, very big problem. It is the one thing that franchisees always mention when I encourage them to build new restaurants, which I do regularly.

Mr. GARDNER. I see my time has expired. Thank you.

Mr. BURGESS. The gentleman's time has expired. And I hope that the exportation of chicken fried steak will add favorably to the balance of trade.

Recognize the gentleman from Virginia, 5 minutes for questions.

Mr. GRIFFITH. Ms. Walz, let me ask you a few questions if I might. Do you know what the regulations—you are a monopoly company so all the price increases get passed through—I think you said earlier—to the consumer, is that correct?

Ms. WALZ. I guess I wouldn't describe us as a monopoly company.

Mr. GRIFFITH. OK.

Ms. WALZ. We are a rural electric cooperative and provide energy. Our members actually own us. We are a wholesale energy provider and they own us and we, by multiyear contract, give them energy.

Mr. GRIFFITH. OK. And all these regulations that we are looking at that are going to affect your industry that you answered questions about earlier, the various types of regulations, do you have any idea what that cost increase is going to be?

Ms. WALZ. I don't. We have, again, a lot of uncertainty in looking at are we going to have three SCRs or are we going to have one SCR? Is the Coal Ash Rule going to get finalized in 2013? So again it is that pancake effect of each of these rules and the added cost that they each have.

Mr. GRIFFITH. If I told you that one of the providers in my area, AEP, American Electric Power, had indicated that their increased cost on some of these regulations were going to be about 10 to 15 percent increase, would that seem to you to be a reasonable number given that they are heavily dependent at this point on coal?

Ms. WALZ. Yes, I think that, you know, not knowing what their current controls are and where they have to go, the number doesn't surprise me.

Mr. GRIFFITH. Do you think that your number would be somewhere in line with theirs or are you all better positioned than AEP?

Ms. WALZ. We are working on those numbers so I don't have a percent increase.

Mr. GRIFFITH. I have a rural district as well with small cities in it. We have median household income of about \$36,000 per year, household income not individual. My constituents are very concerned not only about our loss of coal jobs because of what has been happening with regulations in that industry also affecting your industry, but also we are concerned that we have got a lot of folks on fixed incomes and a lot of folks who just don't make the kind of money that sometimes Washington bureaucrats make and think that everybody can afford those kinds of increases. Would you state that the area that you serve is more like the Washington crowd or more like my district?

Ms. WALZ. The area we serve is much like your district, yes.

Mr. GRIFFITH. And so if my constituents are concerned about a 10 to 15 percent increase in their electric rate, then you believe that perhaps your folks that you serve would also be very concerned about significant power increases?

Ms. WALZ. Yes, they are very concerned.

Mr. GRIFFITH. And do you just do homes or do you also do businesses in that rural area?

Ms. WALZ. We do rural businesses as well.

Mr. GRIFFITH. And I believe that they use a lot of electricity, too?

Ms. WALZ. They do and it is actually growing in States like Wyoming where we have oil and gas development.

Mr. GRIFFITH. And if their electric rates go up, do you know how that affects their competitiveness in the world market?

Ms. WALZ. It makes it more difficult for them to compete in a world market when you don't have similar costs and regulations in other countries.

Mr. GRIFFITH. And so it would be fair to say, would it not, that it actually puts American manufacturers at a disadvantage when the regulations make their energy costs more than they might need to be otherwise?

Ms. WALZ. I would agree. American businesses are at a disadvantage because of these increasing costs.

Mr. GRIFFITH. And AEP has also told me that because of reasonable regulations that we had put on some in the past that they have already cleaned up about 80 percent of their emissions. Would that be similar for your company or have you all done even better?

Ms. WALZ. I would say we started off better. I mean we are a fairly young company so as we built our plants we put the most advanced technology controls on them at the time. We don't have a plant that is uncontrolled. They have been controlled since day one.

Mr. GRIFFITH. OK. And so a large part of the problem, although we can always do better, but a large part of the problem has been resolved since we weren't able to catch fish out of the river that the

previous gentleman stated. Wouldn't that be accurate, that a large part of the problem has been resolved with emissions?

Ms. WALZ. Nationwide?

Mr. GRIFFITH. Nationwide, yes, ma'am.

Ms. WALZ. I would say the standards that are in place have been believed to be protective and proven to be protective of human health and the environment. They are just going the next notch further without valid science in many cases.

Mr. GRIFFITH. Well, here is the concern we have. To get to that 80 percent in our area costs about \$6 billion. To get to this additional 12 percent represented by some of the new regs is going to cost 6 to 8 billion. And wouldn't we be better off as a Nation to have a balanced approach where we look for innovative ways to do this but also look at ways that we don't chase businesses out of the country and don't impact the working poor and those living on fixed incomes who have retired and living on Social Security? Would you agree with that?

Ms. WALZ. I agree with that.

Mr. GRIFFITH. I thank you.

My time is up. I yield back.

Mr. STEARNS. Time is expired.

Mr. Scalise is recognized for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman. I appreciate you holding this hearing. I know one of our colleagues on the Democratic side called it a waste of time to have this hearing. Frankly, I think we need to have more of these hearings and, you know, I think it is important when you get small business owners to take some of their time away, which is hard for you all to do because you are running small businesses, to come up here to Congress and share with us the concerns that you have and the things that are happening here that prevent you from creating jobs. I think that is one of the most valuable things we can do here so I would strongly disagree with the statement that it is a waste of time to do this because I know I go throughout my district meeting with small businesses of all types and walks of life; I hear the common theme from them it seems like every day is it is the policies and the regulations and the laws coming out of Washington that are their biggest impediment to creating jobs.

And so we ought to be not only having hearings but also passing legislation as we have in the House passed over 30 bills to remove some of these regulations that you have been sharing with us. And you know, I think we are going to be getting other ideas from some of the things you are talking about as well as more of the rules that continue to come out unfortunately that show us things that we need to do to continue to try to allow for job creation out there and stop some of the radical stuff that is coming out of Washington.

So I appreciate you first for taking the time out of your schedules to come in here and share these stories with us because I know I read—the Small Business Administration had done a really important report with the impact of regulatory costs on small firms, and they released this in September 2011.

Mr. STEARNS. Mr. Scalise, just if you would yield for one second. Your point is exactly right. I ran a business; I barely had time to

come to something like this. The fact that these folks would take time from their business to come here to do this is remarkable and it is a tribute to them that they want to do it. I mean, if your businesses collapsed 30 percent, you really don't have the time like Mr. Luoto is coming here. So I think that is an excellent point. Thank you.

Mr. SCALISE. No, I appreciate that, Mr. Chairman, because it really is a sacrifice. But again, it gives us the real on-the-ground knowledge to know. You know, we read these rules and laws and we fight a lot of them up here and some people think it is just, you know, because one party wants to fight another party. We are fighting for the livelihoods of our small businesses back home. And so it is valuable for us for you to share these stories because it reiterates to us how important it is that we continue to try to do this.

But in the SBA report, they actually highlighted and went and kind of surveyed and came up with true costs, the true cost of regulations on our small businesses. And they broke it down per family and the estimate by the Small Business Administration is that the regulations and the rules coming out of Washington cost the average American family \$15,586. That is a dramatic cost of all of these regulations, and as many of you describe, don't even really improve people's health. I know, Mr. Puzder, you talked about these regulations coming out of FDA. They make you put these things on your board that don't have anything to do with improving health and you are doing it on your own anyway.

And, you know, I want to follow up with you because I have talked to a small business owner who actually owns franchises like you discussed and he said he owns a couple of McDonald's franchises. And, you know, unlike what some people think, these are small businesses; this isn't a large national corporation. The person who owns a few franchises is running those small businesses separately than the major corporation and they are providing healthcare to their employees. He said for the first time in his business experience—over 40 years he has been in business—first time he has ever had to lay anybody off was just last year and it was because of the President's healthcare law, that the cost of complying just with that law—and there are a whole slew of others—but just the cost of complying with the President's healthcare law, for the first time ever in 40 years of running a small business forced him to lay people off. And you have talked about some of that, too. If you can expand on how your experience and how many different franchisees do you have? How many people own those small businesses that run—

Mr. PUZDER. We have about 200 franchise entities between Carl's Jr. and Hardee's. Some of the restaurants make very good money; some of them in the middle; some of them are marginally profitable. The marginally profitable restaurants will close. The healthcare costs will drive them over the edge. We are going to have to reduce hiring, we are going to have to take full-time employees and make them part-time employees, we are going to have to automate positions. You know, I like personal service and these kiosks that they have where—the kids are much better at it than I am—they can go in and order on the computer screen like an ATM. You know, right now they are kind of cost prohibitive but the

reality is that this medical insurance law becomes effective, they may become less cost prohibitive. We may have to put those in the store. So we are going to have to make a lot of adjustments to try and——

Mr. SCALISE. Do you have any idea how many jobs that would cost just in your experience?

Mr. PUZDER. You know, we have not tried to quantify it. The problem is that the law is very complicated. The regulatory framework is currently very uncertain. So even Mercer Health and Benefits, one of the largest healthcare consultants in the world and we have used them for a number of years, they have a very difficult time giving us any kind of rational estimate of what the cost increase is going to be. And the first estimate I got was between 8 million increase and 32 million and I think I finally got them to settle in on a rational number of about 18. But it is very hard to tell where this is going to go so I really can't give you a number right now.

Mr. SCALISE. And literally could lead to their closing.

Well, again, I thank all of you for your time and coming here and sharing your stories with us. It is really important and it shows us what we need to keep fighting to do.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. STEARNS. The gentleman yields back and we are going to do a second round here. And I appreciate the witnesses being patient with us as we start the second round.

I am going to show a video here which is Jim Cramer on MSNBC yesterday. It is just about a minute, so if I could have the video and perhaps just maybe drop the lights a little bit. Can everybody see that OK? Yes, OK. We can see it. Just can we make sure we hear it?

Ms. DEGETTE. It is our former colleague.

Mr. STEARNS. We need sound here.

Ms. DEGETTE. You know, it didn't work the last time we tried to do it.

Mr. STEARNS. Has this been tried before? Did it work? I am always amazed at how these things don't work because it is so easy to get them to work. It is not like it is difficult. We will give it another 15 seconds here and then we will just go on. No, I think we are OK. We will give you another chance. Well, I think the video if we had run it would actually show Mr. Cramer going through the litany of the problems with Obamacare, the cost it would incur.

And I will start with my questions here and go to Mr. Puzder. You had mentioned earlier that you had brought Mercer in and some of their conclusions based upon the funds that are needed to pay that additional cost and the effects on labor and so forth, what do you hear from your franchisees with regard to the rising healthcare costs attributed to the Affordable Healthcare Act and the impact of the expansion on their businesses, the people that are trying to make the bottom line?

Mr. PUZDER. I have had franchisees come and tell me 1) that they are afraid to grow, they are afraid to build restaurants. And it is PPACA, it is the problems that ethanol is creating with respect to food costs, it is NLRB. There are a lot of things that have them nervous, but a major concern is always the Patient Protection

and Affordable Care Act. And some of them are now trying to get out of the business because they would just like to get their cash and move on and not continue to grow.

Mr. STEARNS. So in addition to not growing they are even scared to invest additional capital right now because of the uncertainty of what it would mean to them?

Mr. PUZDER. Absolutely.

Mr. STEARNS. Is that fair to say? And it would be fair to say in the long run these rising health costs are going to impact CKE. Does this mean you will have less full-time and more part-time? I mean when I ran a restaurant, if something like this happened to me I would say oh, gosh, I will try and go where I can pay in situations, so at least I am not forced to the regulations.

Mr. PUZDER. Well, it is really axiomatic in business that if a cost goes up, you try and decrease your use—

Mr. STEARNS. Right.

Mr. PUZDER [continuing]. And in this case it would be labor. And what a lot of people are talking about is if you have three 40-hour-a-week employees that work 120 hours, if you have four 30-hour-a-week employees, they work 120 hours. So there is a lot of talk about reducing labor forces and this isn't just CKE; this is in retail, restaurants and retail generally about reducing the full-time workforce to a part-time workforce. Then you avoid the coverage. The problem is that you lose productivity so that if everybody goes and takes their full-time employees who have loyalty to the company and know how to do the job, are more consistent workers, if we lost productivity in our workforce, then we lost productivity as a Nation. So there are offsetting costs and benefits on both sides but it is a very difficult problem. We are working very diligently to try and solve it.

Mr. STEARNS. When you do a projection on this, did Mercer come up with a timeline, a projection of cost 2012, 2014 on—'12, '13, '14?

Mr. PUZDER. Our big concern is 2014, which is when—

Mr. STEARNS. 2014.

Mr. PUZDER [continuing]. Things become implemented. They have not given us a projection. Actually, it is hard for them to give us a projection for 2014 because—

Mr. STEARNS. No one knows.

Mr. PUZDER [continuing]. I mean we just don't know. I mean this is why I am constantly hammering on them to come up with more specific guidance and it is very hard to get. Businesses invest when they believe they can make a profit. You usually look at a 5-year plan, you would like a 20 percent return of your money so that in 5 years you get your money back. If you don't know what your healthcare costs are, you don't know what your energy costs are, you don't know what your labor costs are, you don't know where your taxes are going, it is very hard to come up with a rational business plan and build and grow. And so Democrat, Republican, liberal, conservative, House, Senate, I don't care. This is a real problem in America. Businesses don't know whether or not they can make a profit and therefore they are not growing.

Mr. STEARNS. You know, I think you mentioned this earlier but did Mercer actually say that you would have to cut your labor force? Did they go that far?

Mr. PUZDER. Well, one of the options is to reduce full-time labor.

Mr. STEARNS. Full-time. So that was a strong recommendation from Mercer to cut full-time labor.

Mr. PUZDER. That is one of the alternatives that they are analyzing. Again, you know, they gave me an example of a company that went to part-time labor, got a \$5 million in benefits cost but lost \$30 million in productivity.

Mr. STEARNS. Yes.

Mr. PUZDER. I can't say they have strongly recommended it. It is one of the elements and it is a balance that we are currently working on.

Mr. STEARNS. On the whole, your testimony states that the Obamacare is going to apply to all these franchisees and yet a lot of these people are not—you have Mercer but a franchisee doesn't—do they have benefit of the Mercer study or do they have to do their own?

Mr. PUZDER. No, they will have to analyze their own costs because obviously, you know, we have got 21,000 employees and about 900 restaurants. The next largest franchisee has about 300 and most of them have one or two. So the way the law impacts restaurants is very, very different.

Mr. STEARNS. So each of these franchisees has to do what you are doing with your major consultant. Do you have any recommendations for them as a result of the Mercer consultant to you?

Mr. PUZDER. You mean recommendations as to what they should do to cover their healthcare costs?

Mr. STEARNS. Right.

Mr. PUZDER. At the moment I don't because I don't even have a recommendation for what we should do. You know, it is just very difficult to figure out at the current time.

Mr. STEARNS. On that note, I will end my questions and recognize the ranking member.

Ms. DEGETTE. Thank you, Mr. Chairman.

I want to clear a couple things up for the record to start out with. The first thing I want to clear up is with Ms. Walz because I consulted with Mr. Waxman's staff here and I just want the record to be really clear. It was not Mr. Waxman's intention to in any way disparage you personally. He was trying to explore the relationship between this consultant and Tri-State. And I just wanted to clarify that because one of my colleagues had made that insinuation.

And Dr. Mitchell, I wanted to ask you with the exception of the one typo which you are going to correct in your testimony, you are under oath. You realize that. This committee takes all of its testimony under oath, correct?

Mr. MITCHELL. Yes, I understand.

Ms. DEGETTE. And that mistake in your testimony, that was just simply a mistake; it wasn't intentional, correct?

Mr. MITCHELL. That is correct. I didn't have very much notice and that—

Ms. DEGETTE. Sure. And is the rest of your testimony to the best of your knowledge and ability correct?

Mr. MITCHELL. Yes, it is.

Ms. DEGETTE. Thank you. Now, Dr. Mitchell, I want to ask you a question about nutritional labeling, particularly at these fast food restaurants. I know that you are the head of the National Medical Association, which is African American physicians I believe, is that right?

Mr. MITCHELL. No, I co-chair the Environmental Health Task Force—

Ms. DEGETTE. You co-chair the Environmental—so I know because I am the co-chair of the Congressional Diabetes Caucus, which is a bipartisan group. Most members of this committee belong to it. Childhood obesity is one of the most leading concerns in general, but in particular, among communities of color. Has your medical association found that to be correct?

Mr. MITCHELL. Yes, it is one of the priority issues that the medical association is looking at.

Ms. DEGETTE. Trying to prevent childhood obesity, correct?

Mr. MITCHELL. Absolutely.

Ms. DEGETTE. And is one of the issues in preventing childhood obesity the issue of nutritional labeling of food so parents can know what the appropriate nutritional composition is and the calories and fat and so on?

Mr. MITCHELL. Absolutely.

Ms. DEGETTE. And so maybe your association hasn't taken a position on this, but in terms of you yourself, do you think it is a good idea if a parent goes to a fast food restaurant with their child, that they are able to have that kind of nutritional information available to them in a way they can understand it and make an informed choice?

Mr. MITCHELL. Yes.

Ms. DEGETTE. OK.

Mr. MITCHELL. Yes, that is important.

Ms. DEGETTE. Now, Mr. Puzder, I assume that is also important to Carl's because that is why you folks have been posting this nutritional information for a long time. Is that right?

Mr. PUZDER. I would even add that if you go online on our Web site you can actually make a meal for your children—

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. And it will tell you all of the caloric information.

Ms. DEGETTE. Right. Now—

Mr. PUZDER. So we are very aggressive in this area.

Ms. DEGETTE. Right. And you know, I appreciate that. I was telling the chairman the first time they had these labeling requirements in New York—New York was one of the first States that did it—I went into an establishment with my daughter and we were horrified some of the things we thought were really healthy were not really healthy and other things were better for us. I am sure you hear that from consumers every day.

Mr. PUZDER. You know, the big surprise in New York was that bagels had the same amount of calories as donuts.

Ms. DEGETTE. Right. Exactly. Salads can have more calories than sandwiches. And so unfortunately, though, not every fast food business has taken that kind of forward action that you have, isn't that right, Mr. Puzder?

Mr. PUZDER. That is absolutely correct.

Ms. DEGETTE. So I guess what I am kind of getting at is there are good reasons for regulations that would require nutritional information to be provided to consumers, right?

Mr. PUZDER. And not only do I agree with that but I propose in here that we just change the regulations so it is more efficient and more——

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. Economical, not that we get rid of it.

Ms. DEGETTE. And I totally agree with you. As I said in my first round of questioning, so it is not that we should eliminate those requirements; it is so that we should make them reasonable for everybody, right?

Mr. PUZDER. We can make them cost-effective——

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. And more consumer-effective.

Ms. DEGETTE. Exactly. So, you know, like I say, it is not like the Republicans think we should have sensible regulations and the Democrats think we should just over-regulate everything; it is finding that sweet spot so to speak.

Mr. PUZDER. And as I said, I have letters here——

Ms. DEGETTE. Yes.

Mr. PUZDER [continuing]. We have met with—they are Democrats, they are Republicans, they are Senators——

Ms. DEGETTE. Right.

Mr. PUZDER [continuing]. They are Members of this House——

Ms. DEGETTE. Right. And, you know, I feel the same way with Ms. Walz with Tri-State power is we have worked together as a delegation trying to figure out how these regulations work, isn't that correct, Ms. Walz? Now, Mr. Puzder, you are not an expert on the regulatory process other than how it affects your business, right?

Mr. PUZDER. Correct.

Ms. DEGETTE. And so you can't come in and say, Congress, you did make some suggestions but you can't give us the overall what the healthcare regulations should look like or anything like that?

Mr. PUZDER. I can't and are there even people who can? I mean it is pretty complicated.

Ms. DEGETTE. Well, I mean you have to look at each regulation——

Mr. PUZDER. That is exactly right.

Ms. DEGETTE [continuing]. And see how—I mean you can't paint everything with a big brush and say this is good or bad, right?

Mr. PUZDER. Which is why I was a little concerned with the comments at the beginning about associations and we are going to try and—you know, you do need to hear from us I think.

Ms. DEGETTE. Right, but ultimately we have to make the decisions.

And the rest of you, Ms. Walz, Mr. Luoto, Mr. Shoop, you know about your industries but you can't come in and tell us how to make these regulations perfect for everyone, can you, Ms. Walz?

Ms. WALZ. I can't tell you how to make them perfect but we have had a lot of suggestions and involvement and comments over making recommendations how to improve them.

Ms. DEGETTE. And we appreciate that so much. What about you, Mr. Shoop?

Mr. SHOOP. No, I don't think we can tell you how to make them perfect, but we definitely have some ideas on how to do that.

Ms. DEGETTE. On the ones that affect you?

Mr. SHOOP. Correct.

Ms. DEGETTE. And Mr. Luoto, same with you, right?

Mr. LUOTO. Well, you know, regulations are to benefit everybody, and I think that is one of the things that we need to do as business and working with you is to be able to get them so they work together.

Ms. DEGETTE. Amen. I think you are right.

Thank you very much, Mr. Chairman.

And thanks again to, you know, to the entire panel for being here with us today.

Mr. STEARNS. And let me just do an editorial comment to the ranking lady. I appreciate her reaching out and to try in a bipartisan manner to talk about these issues, and I think that is why I enjoy working with her. And, Ms. Walz, I think she aptly pointed out that Mr. Waxman, in his opening statement, was bullying in a direction that—normally you just ask questions about what is relevant, and in this case he didn't. But I respect what she just said in which she did not mean any harm. In fact, the committee tries to respect the witnesses. But what I would say to her in all candor is that, when we have had these eight hearings, we have not heard from the administration that economic impact is the number one thing they are concerned about. It goes into lots of different things and so that is why economic impact particularly for a business is important. So with that—

Ms. DEGETTE. Well, if the gentleman would yield—

Mr. STEARNS. Sure, I will yield.

Ms. DEGETTE [continuing]. Mr. Williams can talk about economic impact and what—

Mr. STEARNS. OK.

Ms. DEGETTE [continuing]. Regulations mean to businesses if you would like to have him talk about that.

Mr. STEARNS. No, we will move on to our next question.

Mr. Burgess.

Mr. BURGESS. I appreciate the chairman for yielding.

Mr. Puzder, I just had a couple of follow-up questions because your testimony was so compelling as this hearing started out and your testimony about the increased cost that your business is going to be experiencing as a result of the Affordable Care Act. I thought it might interest you to know that I spent the evening before we voted on the Affordable Care Act in the Rules Committee and I had a number of amendments that I tried to get made in order. One I remember best was an amendment to change the title and to remove the word Affordable, and you have simply proved the point for me here today that that would have been an appropriate amendment for the Rules Committee to consider and undoubtedly it would have sailed through the House of Representatives had it been allowed to be voted on.

But here is the deal. I mean all of us who were here remember the summer of 2009. We went home to our districts in August; we

did our normal little sleepy summer town halls and our attendance went from a couple dozen people to a couple thousand. And people were significantly upset on both sides but upset about what they were seeing coming out of the then-Democratic-controlled House of Representatives. And I will tell you the thing that I heard over and over again, the themes that came through loud and clear to me during those summer town halls was, number one, don't disrupt the entire system. If you are going to fix some things that need fixing, then fix them, but don't change everything for arguably 60 to 65 percent of the population that is satisfied with how their medical care is administered.

And then the other thing we heard was if you are going to do anything at all, would you please help us with costs? Because we are concerned legitimately about the increasing costs of health insurance and medical care. So my summation is we failed on both fronts.

Now, you are not from inside this Beltway bubble; you are from outside. Am I correct in that assumption that we failed on both charges?

Mr. PUZDER. It would seem at this point that the law does not accomplish those goals. I would have to agree with that.

Mr. BURGESS. Well, I don't know now what we are up to on the total number of waivers, but it would just seem to me that a law that has required northward of 1,500 waivers in order to be successful is by definition not a successful piece of legislation.

Mr. PUZDER. Absent those waivers, a lot of people would not have health insurance.

Mr. BURGESS. That is correct. Now, on the cost side, the efforts at cost containment, you know, really were nonexistent. I mean if you really wanted to put people in charge of the cost of healthcare—I mean I have a health savings account; I have had one for 20 years—the reason I reference the cheaper inhalers is because I am so tight I don't like to pay for those expensive inhalers because I pay for everything out-of-pocket when it comes to my prescriptions because I have such a high deductible. When I got to the pharmacist and they say paper or plastic, they are referring to folding money or a credit card.

So it is important you keep people involved in the cost of their care. One of the big problems we have in healthcare in America right now is that no one knows what their care actually costs and most people don't care because we have anesthetized them over the years with either third party insurance or, in the case of Medicare and Medicaid and SCHIP, government-run insurance.

But the ranking member suggested that it was the cost of the uninsured going to the emergency rooms that were a cost driver. Number one, we haven't fixed that problem so if that is a cost driver—if anything, we have made it worse. But on the other hand, is that really the cost driver and is it the cross-subsidization that your private insurance has to provide the Federal Government because the Federal Government with Medicare and Medicaid does not pay the cost of rendering the service? Is that the cost driver rather than the people showing up to the emergency rooms?

Mr. PUZDER. You know, there are a lot of alternative options with respect to fixing the healthcare system and to stop the dy-

namic cost increases that were taking place before the PPACA and since. I think I said in my original remarks I am not a healthcare law expert. All I can tell you is that the way that it has been done, this way, will have a devastating impact on the ability of the private sector to create jobs because it allocates those costs which are now spread. They are too high but they are spread across the broad base of taxpayers. When you allocate all those costs to the private sector, the businesses that you are looking to to create jobs, you inhibit if you do not eliminate our ability to create jobs, to at least reduce it because benefits—and I know a lot of people think the PPACA has benefits; I am not here to argue about that—but benefits have costs and the cost of this bill will be the ability of the private sector to create jobs.

Mr. BURGESS. I so appreciate you saying that. I get so frustrated when I hear the administration say that this is going to be free and that is going to be free. You and I know when anything has healthcare stamped on its side, it is never free. Someone is paying the price somewhere.

I thank the chairman for their recognition. I will yield back my time.

Mr. STEARNS. I thank the gentleman.

Mr. Gardner from Colorado is recognized for 5 minutes.

Mr. GARDNER. Thank you, Mr. Chairman. And I also want to thank Ranking Member DeGette for clarifying for me the statements made by Mr. Waxman.

I just wanted to read a little bit of an article from a December article in the Denver Post. It was December 30, 2011, and the title of it is “Economic Certainty Being Sought by Small Businesses in Colorado.” And it was a survey of the Colorado/Wyoming members of the National Federation of Independent Businesses, 7,500 members, and their number one concern is economic certainty. And here is the quote from the leader of the NFIB in Colorado/Wyoming is “their message is leave us alone. We know best. If you want to create jobs, create economic certainty.” We also heard during one of the opening statements a member of this committee who has said that this hearing is perhaps nothing more than an airing of pet peeves, that this is pet peeves, an issue that affects just these people and they are airing their grievances.

And so I guess I would start with that and I would start with Mr. Puzder. Do the issues that you address today, are these just your concern alone only affecting the businesses that you deal with?

Mr. PUZDER. No, the issues that I raise would either affect the entire quick service restaurant industry or retail I would say in general if not manufacturing as well in some instances.

Mr. GARDNER. And that is not just a couple hundred people; that is not just a couple thousand people. How many people would that affect?

Mr. PUZDER. We are the fifth largest, I believe, chain in the country and we have 70,000 employees. So you can take it from there.

Mr. GARDNER. Ms. Walz, the same with you. I mean are these issues that we talked about today, are they only affecting Tri-State or are they affecting others around the country?

Ms. WALZ. They are affecting all utilities across the entire country.

Mr. GARDNER. And you mentioned you had 750 people that worked between the coal operation in Craig and the power plant in Craig. Those operations would be affected as well, as would similar operations around the country?

Ms. WALZ. That is correct.

Mr. GARDNER. Mr. Shoop, the same question for you.

Mr. SHOOP. You know, when we incur a billion dollars of cost, those costs are going to go to our customers. We have 790,000 customers that are going to see an increase. In my written statement I estimated that it would lead to a 23 percent increase for those residential customers, and then on top of that, increases for industrial and small business customers. And when we have, like last summer, 50 days of over 100 degree weather, it is going to raise people's bills significantly.

Mr. GARDNER. Mr. Luoto?

Mr. LUOTO. Yes, the exclusion of the Silvicultural Rule for loggers in the United States—there are 48,000 loggers right now currently—it was almost 70,000. It has shrunk down. Obviously it is having a huge effect and the uncertainty that we are facing is going to make it even worse. You know, we have got to buy equipment; we face uncertainty in that. So obviously it is having a huge effect on what our industry is doing and it will have a huge effect on America as it comes back to getting the housing industry going and everything else because the wood will not be available.

Mr. GARDNER. And I think the four businesses here that have talked about that I mean really highlight the concern that I have throughout this country and the effect and impact that regulatory uncertainty, regulations have. You know, looking at a report—this report is dated December 16 of 2011 from the Small Business Administration—the cost of Federal regulations, \$1.75 trillion; the cost of regulatory burdens from new rules proposed or enacted for 2011, over \$90 billion; major regulations proposed or enacted in 2011 as defined in the Executive Order 12866, 750; the number of rules repealed in 2011, one, and it was a spilled milk rule that the President spoke about at the State of the Union address.

Mr. PUZDER, in your experience have you seen a regulation or rule repealed?

Mr. PUZDER. Like I said, we have that 11-page document with 57 categories and it just gets longer; it doesn't get shorter.

Mr. GARDNER. Ms. Walz?

Ms. WALZ. We have seen no reductions, just significant increase in the number of rules.

Mr. GARDNER. Mr. Shoop?

Mr. SHOOP. I do not recall any.

Mr. GARDNER. Mr. Luoto?

Mr. LUOTO. I don't see any. I think it is getting bigger.

Mr. GARDNER. And so I think that is the challenge we face. And as the members of Colorado small businesses and Colorado and Wyoming, 7,500 people have said economic certainty is the issue that they are concerned about and the costs that that will incur to them.

Ms. WALZ, in our remaining time just a couple of questions for you. We talked about the Sunflower plant. It is the regulatory environment that is currently preventing that plant from going forward, correct?

Ms. WALZ. I think the Utility MACT Rule, yes, we referred to the fact that the standards are well below what vendors can design to——

Mr. GARDNER. What they can actually design technologically available.

Ms. WALZ. Correct, yes.

Mr. GARDNER. Does that threaten the Colorado economy? Does that threaten the businesses that cooperatives work with?

Ms. WALZ. It threatens our ability to provide reliable and affordable energy to our entire service territory and Colorado's economy, yes.

Mr. GARDNER. And then going back to the SIP issue, if the EPA does not approve the Regional Haze State Implementation Plan that we have worked with bipartisan support in Colorado, will that potentially hurt jobs in Colorado and the Colorado economy?

Ms. WALZ. It will. Essentially, each time we have a new rule that is layered on top of all the others, the existence of the coal industry and our coal plants is threatened with each one.

Mr. GARDNER. Thank you. I yield back.

Mr. STEARNS. The gentleman yields back.

I am going to have the last word as the chairman here and I just want to establish once and for all FactCheck.org—it is a project of the Annenberg Public Policy Center of the University of Pennsylvania—citing numbers provided to Congress in 2011 by the Office of Information and Regulatory Affairs, reports that the estimated cost of Federal regulation under Obama from the time he took office to the end of the 2010 fiscal year, not including regulations issued by the independent regulatory agencies, was somewhere between \$8 billion and \$16.5 billion. During the same initial stretch under President Bush, the estimated cost of new regulation was between \$1.3 billion and \$3.4 billion. All figures are adjusted for inflation.

Now, I have one slide to conclude. Just this year—we are talking about regulations for 2012—from this we can see that since the President's executive order, economically significant rules repealed this year are none. We have costs of regulation going up, nothing has been repealed, and hours of annual paperwork is increasing. So the conclusion, at least from the standpoint of this chairman is, regulations are going up, nothing is being repealed. And I thank our witnesses today. I thank all of them for coming. I think that is——

Ms. DEGETTE. Mr. Chairman, I am sorry to interrupt but where did you get the information in that slide?

Mr. STEARNS. We would be glad to furnish you. I think it came from the Senate Republican Policy Committee.

Ms. DEGETTE. OK. Well, I reserve——

Mr. STEARNS. Well, you certainly can put in the record——

Ms. DEGETTE [continuing]. Whether it should be put in the record.

Mr. STEARNS. Well, I think we will offer you to offer anything you want to change but that is it. And this committee is adjourned. Let me just say in conclusion I would like to thank all the witnesses but also if any member wants to put into the record, they have 10 business days, including you, Ms. DeGette, to submit questions for the record. And I ask the witnesses to agree to respond promptly to the questions. Thank you.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]


TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233-0695 303-452-6111

March 21, 2012

The Honorable Cliff Stearns
 Chairman
 Subcommittee on Oversight and Investigations
 Committee on Energy and Commerce
 Washington, DC 20515

Dear Mr. Chairman:

Pursuant to your letter of March 8, 2012, forthwith are answers to questions submitted for the record by the Ranking Member of the Energy and Commerce Committee, Mr. Waxman.

Is it accurate that Tri-State provided Dr. Michaels' firm, NHES, with \$50,000 in 2006?

Yes.

Dr. Michaels describes the funding he received from Tri-State as "support." Please explain what understanding Tri-State had with Dr. Michaels in providing this funding. Were any goods or services contracted for in exchange for this support? If not, please explain why this funding was provided. Please explain how the members of Tri-State benefitted from this support.

In 2006, Tri-State made a one-time donation of \$50,000 to New Hope Environmental Services (NHES). Tri-State's Board of Directors approved the disbursement.

The Tri-State Board of Directors voted in 2006 to contribute to NHES to assist the organization's research and development efforts in exploring the causes and impacts of climate change. We believe it is in the best interests of Tri-State's member systems to have a complete understanding of the issue, so that as an industry and a nation, we can make the most informed decisions without harming our economy and our way of life.

Dr. Michaels' affidavit also stated that Tri-State Generation and Transmission Association "had requested that its support of \$50,000 to New Hope be held confidential. After this support was inadvertently made public by another New Hope client, Tri-State informed (Dr. Michaels) that it would no longer support New Hope because of adverse publicity." Is it accurate that Tri-State requested that its funding of New Hope be held confidential? If so, please explain why?

We understand that Dr. Michaels' affidavit filed in the United States District Court for the District of Vermont indicates that Tri-State requested the one time donation of \$50,000 remain confidential. We have no documentation to refute or confirm this assertion.

Has Tri-State funded Dr. Michaels, his firm, NHES, or other affiliated organizations in years other than 2006? If so, please provide a list of the years in which funding was provided, the amount of the funding and the goods or services, if any, provided to Tri-State in exchange for the funding.

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The Honorable Cliff Stearns
March 21, 2012
Page 2

Our review indicates that Tri-State has not directly funded Dr. Michaels or NHES except for the 2006 donation.

During the February 16, 2012, hearing, you testified that Tri-State funds "R&D for carbon management and carbon policies." Please explain Tri-State's policies and approach in funding these R&D activities. Please also provide a list of the R&D projects that Tri-State is currently funding and Tri-State's annual budget for these R&D activities. Did Dr. Michaels' firm, NHES, provide Tri-State with R&D -on carbon management and carbon policies? If so, please provide details on his R&D work:

Tri-State has an annual budget of \$3 million for research and development. We fund R&D that includes Carbon Capture and Sequestration Demonstration Projects and the Department of Energy-funded Colorado Plateau Carbon Dioxide Sequestration site characterization.

The Tri-State Board of Directors voted in 2006 to contribute to NHES to assist the organization's research and development efforts in exploring the causes and impacts of climate change. We believe it is in the best interests of Tri-State's member systems to have a complete understanding of the issue, so that as an industry and a nation, we can make the most informed decisions without harming our economy and our way of life.

Does Tri-State fund the work of any other climate scientists or firms or institutions that publish on climate science? If so, please identify the scientists, firms, or institutions, the years in which they were funded, the purpose for which they were funded and the amount in each year for which they were funded.

Since 1993, Tri-State has been a participating member in the Electric Power Research Institute (the world's foremost utility R&D consortium) and the Cooperative Research Network (a national collaborative effort focusing on the special research needs of electric cooperative systems). Tri-State's investments, added to that of other utilities around the world, help fund the advancement of technology and science that will improve the reliability and efficiency of electric systems for utilities, as well as homes and businesses.

Sincerely,

Barbara A. Walz
Senior Vice President, Policy and Environmental

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